

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Alicia Pereschuk

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District #43. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Alicia Pereschuk  
321 W 28<sup>th</sup> St  
Baltimore MD 21211  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpps20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.



**SB0051\_AmyRuddle\_Favorable .pdf**

Uploaded by: Amy Ruddle

Position: FAV

Date of Hearing: Feb. 2, 2023

Amy L. Ruddle  
Silver Spring, MD 20901

**TESTIMONY ON SB0051 - POSITION: FAVORABLE**

Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Amy L. Ruddle

My name is Amy Ruddle. I am a resident of District 20. I am submitting this testimony in support of SB#0051, Criminal Procedure - Reasonable Suspicion and Probable Cause – Cannabis.

I am a small business owner, attend Temple Emanuel synagogue in Kensington, MD, and am also a member of and volunteer for the National Alliance on Mental Illness (NAMI) of Montgomery County. I am compelled to provide testimony in favor of SB0051 because of my Jewish values: a central tenet of my faith is that all people are equally precious and worthy; moreover, according to the principal of tikkun olam, it is my responsibility to actively fight social, racial, and economic inequity in my community (and the world at large). I also write today as an individual living with mental illness who is also able to articulate my lived experience, and I believe it is my responsibility to advocate for myself and people like me. It's because of these values that I write my testimony today.

I am in favor of banning odor searches because I believe that an important component of public safety is limiting unnecessary interactions between police and community members. Historically, Marylanders of color, immigrants, members of the LGBTQ+ community, people with disabilities, and those experiencing mental health crises have often been harmed by police, regardless of police intention. As someone who advocates constantly for reducing unnecessary police interaction from the mental health crisis perspective, I am doing the same today in support of the rights of the aforementioned groups, especially black Marylanders who are more likely to be stopped and searched by police.

We know that traffic stops disproportionately injure and kill drivers of color. To continue allowing the odor of cannabis to be probable cause to remove someone from their car adds greater danger to traffic stops and increases the likelihood of people of color being unjustly criminalized. Furthermore, with the legalization of cannabis in Maryland, it makes absolutely no sense to continue to use the odor of a legal substance to as probable cause for a search.

I believe passing this legislation will help to reduce unnecessary police interactions, which will in turn help to transform public safety in our community. I respectfully urge this committee to return a favorable report on SB0051.

**sb51-wallis-testimony.pdf**

Uploaded by: Anastacia Wallis

Position: FAV

February 2, 2023

Dear Members of the Judicial Proceedings Committee,

I am writing today to express my strong support for SB 51. When I was a college student at the University of Maryland, my life was forever changed by a traumatic arrest and search of my dorm room, solely based on the odor of cannabis.

I was a 19-year-old freshman, and was smoking a joint in my dorm room with a friend when we heard a knock at the door. I answered and two police officers barged in and started to berate me. I complied immediately and gave them the 0.5 grams of cannabis that I had. They proceeded to tear my room apart, dumping all my belongings on the floor, while I cried. I had a panic disorder, and briefly fainted. I woke up handcuffed to a chair while they continued searching my room. When they were finished searching, the female officer searched my body and instructed me to put on underwear since they were taking me to the police station. I asked if the male officer could leave while I changed, she said no and kicked the door closed, and forced me to change in view of the male officer. They marched me out of the dorm, pressed my face onto the police car then shoved me inside. At the police station, I was put into shackles around my ankles, waist, and wrists. Officers there laughed and made fun of how upset I was. I spent the night in a cell with someone experiencing some kind of mental health crisis and was released on my own reconnaissance the next day. Not having a phone or any money with me, I was forced to walk about a mile back to campus, in my pajamas, in January. The charges were eventually dropped.

The search was initiated because residence hall policy at the time mandated that residence hall staff were to call the police if they smelled the odor of marijuana. The experience was deeply traumatizing and inspired me to become an activist for drug policy reform.

It was unnecessary to involve police in such a minor situation, and I'm lucky I didn't suffer more serious psychological or physical harm as so many have at the hands of police. I will never forget how I was treated like an animal, and it has forever shaped my inability to see police as people there to protect me.

I urge you to pass this law and end the indignity of invasive and unnecessary searches due simply to the odor of cannabis.

Anastacia Wallis

# **Testimony for the Senate Judicial Proceedings Comm**

Uploaded by: Beverly John

Position: FAV

**Testimony for the Senate Judicial Proceedings Committee**  
**Thursday, February 2nd, 2023**  
**SB 51 - Criminal Procedure - Reasonable Suspicion and Probable Cause -**  
**Cannabis**  
**FAVORABLE**

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Beverly John. I have lived in Prince George's County, District 47 since 1998. I would like to express my support for Senate Bill 51.

Providing the police power to stop citizens or to search their vehicles based on a *real*, *perceived*, or *fabricated* smell of marijuana is inherently discriminatory and used to profile Black and Brown people disproportionately. We have gained ground in acknowledging the negative economic impact and harm to our communities caused by the Nixon era "war on drugs." Marylanders have voted to legalize adult use and possession of the substance and should be free to use the substance without fear of getting caught in this loophole. With legalized use of the substance, how can you continue to use the odor as justification to stop and search?

The passage of Senate Bill 51 would help decrease the racial profiling of Black and Brown Marylanders and help protect our Fourth Amendment rights. It is time to confront this "war on drugs" mentality that has destroyed so many communities and lives in our state.

As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance cannot be used to justify a stop and search of an individual or their vehicle.

For the foregoing reasons, I urge a favorable report on Senate Bill 51.

Thank you.

# Testimony SB51 .pdf

Uploaded by: Camilla Day

Position: FAV

**Camilla Day  
6 Gerard Ct  
Rockville, MD 20850**

**TESTIMONY ON SB51 - FAVORABLE**

**Criminal Procedure – Reasonable Suspicion and  
Probable Cause – Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the  
Judicial Proceedings Committee

**FROM:** Camilla Day

**My name is Camilla Day, and I am testifying in favor of  
SB51 including with any sponsor amendments, as a  
resident of Montgomery County’s District 17 and a  
member of Adat Shalom Reconstructionist  
Congregation in Bethesda, MD.**

While police are required to obtain a search warrant before  
conducting a search, the smell of cannabis is currently used as an  
exception to this constitutional right. Within the last few years,  
officers in several states were found to have lied about smelling  
cannabis, which is legal in Maryland, before conducting a search. Using  
smell of cannabis to justify a search is clearly a loophole that can lead  
to unfair searches. We need SB51 to end this loophole.

In addition, Black drivers are more likely to be stopped and searched  
by police. For incidents involving Black drivers, probable cause  
(including the odor of cannabis) was used to justify 67% of searches,  
compared to 46% of incidents involving white drivers. Pulling drivers  
out of their car because of the lingering odor of a legal substance adds  
further danger to these stops. Banning odor searches would reduce  
unnecessary, harmful interactions with the police.

**I respectfully urge this committee to return a favorable  
report on SB51.**

**SB51 testimony, favorable 2-1-23.pdf**

Uploaded by: Carol Antoniewicz

Position: FAV

February 1, 2023

Senate Judicial Proceedings Committee

Written Testimony

**SB51 – Criminal Procedure** - Reasonable Suspicion and Probable Cause - Cannabis

Position: **Favorable**

As a resident of Frederick County, I am writing to urge your favorable report on SB51, which would ban police stops and searches based on the mere odor of marijuana.

Last year Maryland voters voted overwhelmingly to legalize marijuana for adult recreational use. It is time to bring other laws into line with this new policy. Our current legal standards still allow police to stop and or search an individual based solely on the order of marijuana. *This practice needs to end.* Marylanders should not fear police stops or searches based on the use of a legal substance.

I support public safety and also uphold the Fourth Amendment right to be free of unreasonable search and seizure. From a human and civil rights perspective, the smell of marijuana should not be used as probable cause to search a person's vehicle. Several other states, including Virginia in New York have ended that practice. Maryland should do the same.

This is also an equity issue. Statistics show that Maryland police are twice as likely to search Black drivers and vehicles during traffic stops compared to White drivers, disproportionately citing probable cause. Because there is no way to confirm or disprove that the smell of marijuana was detected, an officer's claim of "I smelled marijuana" can too easily be used as a pretext for an unconstitutional search. My hope is that removing this pretext will protect the rights of ALL residents to be free of unreasonable search and seizure. Maryland needs to work harder to end racial profiling. SB 51 can be part of that progress.

I urge a favorable report on SB51.

Carol Antoniewicz  
8207 Gambrill Park Road  
Frederick, MD 21702

**SB51\_Carol Stern\_FAV.pdf**

Uploaded by: CAROL STERN

Position: FAV

**Carol Stern  
4550 North Park Avenue, Apt T106  
Chevy Chase, Maryland 20815**

**TESTIMONY ON SB51 - FAVORABLE**

**Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Carol Stern

**My name is Carol Stern, and I am testifying in favor of SB51 including with any sponsor amendments, as a resident of Montgomery County’s District 16 and a member of Adat Shalom Reconstructionist Congregation in Bethesda.**

The Jewish sage, doctor and philosopher, Maimonides, lists five transgressions for which people do not repent. One of them is mistakenly suspecting an innocent person of doing wrong. One will justify his suspicion by saying, “I haven’t sinned. What did I do to harm that person?” He doesn’t realize that he commits a sin by considering an innocent person a transgressor. The racial bias in the criminal justice system means that, all too often, people of color face a presumption of guilt for crimes they did not commit.

In Maryland, Black drivers are more likely to be stopped and searched by police. For incidents involving Black drivers, probable cause (including the odor of cannabis) was used to justify 67% of searches, compared to 46% of incidents involving white drivers. Traffic stops disproportionately injure and kill drivers of color. Pulling drivers out of their car or stopping people on the street because of the lingering odor of a legal substance adds further danger to these stops. Banning odor searches would reduce unnecessary, harmful interactions with the police and eliminate a gateway to the unjust criminalization of Black and brown people.

Passing SB51 is most certainly an equity issue since preventing these pretextual stops and searches that overwhelmingly impact Marylanders of color is imperative. It’s also important to emphasize that SB51 will not stop police from investigating DUIs, if there is evidence that someone is driving impaired because of the use of drugs.

**I respectfully urge this committee to return a favorable report on SB51.**

# **SB 51 Criminal Procedure - Reasonable Suspicion an**

Uploaded by: Casey Hunter

Position: FAV

February 2, 2023

Testimony on SB 51

Criminal Procedure – Reasonable Suspicion and Probable Cause - Cannabis

Judicial Proceedings

Position: Favorable

Common Cause Maryland is in support of SB 51 which would affirm Marylanders' fourth amendment rights by ending police stops and searches based on the odor of cannabis, which oftentimes leads to Marylanders being wrongly locked out of their democracy. The scent or alleged scent of cannabis alone is not sufficient to constitute a reasonable suspicion of criminal activity - especially in a state where Marijuana has been decriminalized for nearly a decade and will become legal in less than six months.

Black Marylanders are disproportionately impacted by the use of odor stops and searches, as they are twice as likely to be stopped and searched than their white counterparts. When the perception of odor alone is enough to meet the threshold of probable cause, law enforcement officers have complete control over the narrative. The opportunity to use the alleged odor of cannabis as justification allows officers to feel empowered in making baseless and often racially motivated stops and searches.

Smell, like any human sense, is subjective. How many times have you smelled something that the person next to you did not? Regardless of how certain any given officer may be that they smell cannabis, there is no definitive way to determine where that smell could be coming from, or how it got there. It is unacceptable that, today, any law enforcement officer could smell marijuana in the air, randomly identify a "suspect" based on physical appearance, and legally search them based on entirely unverifiable claims.

SB 51 will work to close dangerous loopholes in policing as the cannabis landscape continues to evolve in Maryland. With upcoming legalization in July, continuing to allow odor stops and searches is unacceptable, and it is crucial to pass SB 51 to end these frivolous and discriminatory stops. Putting an end to these unnecessary stops will decrease the number of individuals who are being locked out of our democracy, due convictions that lead to their disenfranchisement and take away other meaningful opportunities to make their voices heard.

We strongly urge a favorable report.

# **SB0051 Probable Cause - Cannabis.pdf**

Uploaded by: Cecilia Plante

Position: FAV



**TESTIMONY FOR SB0051**  
**Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**Bill Sponsor:** Senator Carter  
**Committee:** Judiciary Proceedings  
**Organization Submitting:** Maryland Legislative Coalition  
**Person Submitting:** Cecilia Plante, co-chair  
**Position:** FAVORABLE

I am submitting this testimony in favor of SB0051 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

After decades of proof of the economic and racial harm deliberately caused by marijuana criminalization, Marylanders and their legislators have successfully made strides to legalize its consumption. But there are still dangerous loopholes left that can be used to perpetuate the “war on drugs”, which is really, as the data has made clear for over half a century, a war on Black and brown people. One of the more egregious loopholes is the police having the power to conduct traffic stops and searches based solely on their belief that they smelled marijuana.

The smell of marijuana is not something that can be categorically proven, thus it is not a solid basis for the police to stop and search an individual. It is an excuse that is routinely used to infringe on privacy which in turn further perpetuates racial profiling. In Maryland, police stop Black drivers more frequently than any other race, and probable cause to search is used to justify 67% of searches. THIS IS ABHORRENT AND UNACCEPTABLE.

Marijuana odor has been used as a loophole to justify racial profiling for far too long. As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance, without any other behavior, cannot be used to justify a stop and search.

We support this bill and recommend a **FAVORABLE** report in committee.

# **SB51- Maryland Legal Aid- FAV.pdf**

Uploaded by: Charlotte Ahearn

Position: FAV



**MARYLAND  
LEGAL AID**

*Advancing*  
**Human Rights and  
Justice for All**

February 2, 2023

Senator William C. Smith, Jr.  
Chair, Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: Testimony Supporting Sente Bill 51: Reasonable Suspicion and Probable Cause  
- Cannabis**

Dear Chairman Smith and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 51 on behalf of Maryland Legal Aid (MLA), the state's largest nonprofit law firm. Though MLA does not represent people in criminal matters, our clients often require assistance for the devastating civil challenges that stem from criminal justice system involvement, such as homelessness, unemployment, family separation, and the inability to expunge old convictions—even for marijuana use, in a state that is about to legalize recreational use. These traumas can impact communities for generations—not to mention the state's economy. Senate Bill 51 addresses these traumas by preventing arrests and convictions based on the mere odor of marijuana, which is too often a pretext for questionable or discriminatory police conduct, or worse. MLA submits this testimony at the request of Senator Jill Carter and urges a favorable vote on Senate Bill 51.

Across our civil practice areas, and especially through our expungement work, MLA clients often share how police interactions impact them. Many of these interactions begin with a traffic stop. Traffic stops are one of the most common ways the police interact with all community members, but they should only happen to serve a true public safety purpose. Instead, we know that Black, brown, and low-income people are pulled over with higher frequency than other individuals, often with dire, sometimes deadly, consequences.

Recently, Marylanders voted to legalize cannabis in our state. This is in line with a national movement recognizing the failure of the war on drugs, the racist foundations of marijuana criminalization, and the financial, medicinal, and other benefits of regulating marijuana in the legal market economy. Continuing to permit vehicle searches and stops based on cannabis odor defeats the purpose of the new legislation, continues to criminalize Marylanders, and ignores the voices and votes of this committee's constituents. In other words, continuing to allow stops based on the mere odor of cannabis allows legalization to take place only through the letter of the law, and not the spirit. MLA has witnessed similar perverse outcomes with cannabis legislation in the past. For example, MLA advocates were thrilled when small amounts of marijuana were decriminalized in

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2014. In tandem with the expansion of the expungement law in the years following, we were able to assist many clients who had marijuana possession charges on their criminal records. However, the law did not decriminalize marijuana paraphernalia, which is charged separately. Therefore, anyone who was also convicted of marijuana paraphernalia—and so many marijuana cases include charges that increase the potential penalty and force quick guilty pleas—could not have an expungement. While the law has changed further since then, the inconsistencies were problematic for years. Passing Senate Bill 51 now, on the eve of cannabis legalization, would prevent these sorts of inconsistencies going forward and honor the wishes of Maryland citizens: individuals should not be penalized for using marijuana.

MLA has filed hundreds of expungement petitions for dismissed or stet docket charges related to cannabis possession. Basing a search or arrest on an odor is a conveniently tenuous thing; an odor cannot be photographed or filmed on a body camera. It seems the state prosecutors agree, based on the sheer number of times MLA has expunged possession charges they have declined to prosecute. Over and over again our clients tell us that they were pulled over for a real (or imagined) traffic violation, an officer claims to smell cannabis, and a car search ensues. A large percentage of these charges are eventually dropped. However, in the meantime, our clients are stuck navigating the consequences of an arrest: missing work, missing school, paying for childcare, retrieving a towed or impounded vehicle, replacing lost personal items. Of course, these consequences are most harshly felt by low-income people like MLA's clients, for whom just one missed paid workday or lost phone can be the springboard to cataclysmic life changes, such as losing a job, a house, a driver's license, a professional license, or even custody of their child.

In fact, many of our clients relate stories about leaving police interactions without being arrested but becoming the victims of crimes themselves. This usually occurs when the police take untraceable bills from our clients—people who police know are less likely to have bank accounts or credit cards, and more likely to carry cash. Clients are too afraid, or too jaded, to report these police officers. This should never happen. By reducing gratuitous stops for the alleged smell of marijuana, Senate Bill 51 would limit these situations and limit the possibility of perpetuating discriminatory, harmful and potentially criminal police conduct toward vulnerable people, therefore limiting the knock-on criminal and civil consequences that our clients deal with on a daily basis.

Thank you for providing MLA the opportunity to comment on this important piece of legislation. We ask that this committee give it a favorable report, and strongly urges its passage into law.

/s/Charlotte Ahearn  
Charlotte Ahearn, Esq.  
Staff Attorney, Community Lawyering Initiative  
Maryland Legal Aid

# **SB51 - Marijuana Odor Search - Christina Pham Linh**

Uploaded by: Christina Pham Linhoff

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 46, a mom, a professional, and a constituent. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Christina Pham Linhoff  
46 E Randall St, Baltimore, MD 21230  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Daryl Yoder

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 44A. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Daryl Yoder  
309 Glenmore Ave.  
Catonsville, MD 21228  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

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<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **Testimony MD SB 51 MJ Searches.pdf**

Uploaded by: Debbie Ramsey

Position: FAV



# LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

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Detective Sergeant Neil Woods, Ret.  
Derbyshire, England, LEAP UK

Date: February 2, 2023

Re: SB 51 - Ban pretextual stop and search based on odor of cannabis

Position: SUPPORT

To: Senate Judicial Proceedings Committee

Dear Distinguished Committee Members,

Thank you for the opportunity to submit testimony in support of Senate Bill 51, which would ban stops and searches based on the odor of cannabis. My name is Debbie Ramsey and I am a retired detective, having served 12 years with the Baltimore Police Department. I represent myself as a law enforcement professional and as a speaker for the Law Enforcement Action Partnership (LEAP). I support SB 51 because it would help restore trust between police and the community.

LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience serving in the justice system. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety and working toward healing police-community relations.

Having spent the bulk of my career with the Baltimore Police Department working as a detective with the Criminal Investigation Drug Enforcement Section, I witnessed a large amount of resources devoted to cannabis-related arrests. I also saw that when police stopped people and searched their cars without finding anything, we turned more and more people against the police.

In particular, officers destroy community trust when we conduct probable cause searches based on the odor of cannabis, because it is an unreliable and unverifiable measure. The mere scent of cannabis cannot indicate the amount of time the odor has been present, where the odor came from, or if the odor is a result of unburnt or burnt marijuana. Additionally, there is no way to confirm or deny the presence of the odor after a search.

**LawEnforcementActionPartnership.org**

*Formerly known as Law Enforcement Against Prohibition*

These searches damage public confidence in police because they fall disproportionately on Black drivers. Maryland [Race-based Traffic Stop Data](#) reveal that police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. Black drivers are more likely to face probable cause searches, which are often justified by cannabis odor – for searches involving Black drivers, officers justified 67% using probable cause, compared to 46% of searches involving white drivers.

So I was encouraged to see Maryland lawmakers introduce Senate Bill 51, which would prevent officers from conducting stops and searches based solely on the odor of cannabis. SB 51 is common sense, particularly since possession of a personal use amount of cannabis has been decriminalized in Maryland. Therefore the odor of cannabis does not indicate a crime and should no longer provide reasonable suspicion or probable cause for stops and searches.

This legislation is a necessary step in maintaining the safety of Maryland residents and their confidence in law enforcement. Marylanders have a right to a personal use amount of cannabis, and should not be stopped and searched on the basis of the odor of a legal substance.

Thank you for the opportunity to share my perspective and experience in support of this bill.

Respectfully,

Debbie Ramsey  
Retired Baltimore Police Department Detective  
Speaker, Law Enforcement Action Partnership (LEAP)

**PJC testimony SB 51 favorable.pdf**

Uploaded by: Debra Gardner

Position: FAV



**Jeniece Jones, Executive Director**  
**Albert Turner, Attorney, Human Right to Housing Project**

Public Justice Center  
201 North Charles Street, Suite 1200  
Baltimore, Maryland 21201  
410-625-9409, ext. 228  
[jonesj@publicjustice.org](mailto:jonesj@publicjustice.org)  
[turnera@publicjustice.org](mailto:turnera@publicjustice.org)

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SB 51 Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis  
Hearing before the Senate Judicial Proceedings Committee, February 2, 2022  
Position: Favorable

The Public Justice Center (PJC) is a nonprofit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. The Public Justice Center envisions a just society where Black, Latine, Indigenous, Asian, and other historically exploited people are free from systems of oppression, exploitation, and all expressions of discrimination. This will shift power and resources to BIPOC (Black, Indigenous, and other people of color) across Maryland.

SB 51 will protect against unlawful searches in a post-legalization of cannabis in Maryland. The smell of cannabis alone no longer implies criminal activity. When it was illegal, officers might rely on the plain smell of marijuana for probable cause, reasoning that the odor alone was evidence of a crime—and that individuals had no right to maintain the privacy of their criminal activity.

Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. Racial disparities in policing are perpetuated by systemic exclusion and discrimination and fueled by implicit and explicit bias. In 2021, Black people were nearly 41% of all police stops in the state of Maryland despite being only 31.4% of the state population. Police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. These disparities are not by accident but are a byproduct of the long history of white supremacy in this state and country. Allowing police to use the smell of a legal drug to establish probable cause exacerbates already existing disparities and it must end.

Truly, it is the logical and necessary extension of the legislature's work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session.

For the foregoing reasons, the PJC urges a favorable report on SB 51. Should you have any questions, please contact Jeniece Jones, Executive Director, at 410-400-6952, or [jonesj@publicjustice.org](mailto:jonesj@publicjustice.org).

*The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.*

# **Laitin testimony.pdf**

Uploaded by: Elissa Laitin

Position: FAV

Subject: Please Ban Marijuana Odor Stops

Dear Senator Waldstreicher:

As one of your constituents, I ask you to support Senate Bill 51 which would ban the use of marijuana odor as a reason for police to stop and search people in Maryland.

I was very happy to see the Maryland legislature support the legalization of adult recreational use of marijuana last year. Maryland voters then enthusiastically supported the legalization ballot measure this past fall. However, the tools of the racist “war on drugs” still remain and need to be dismantled. One of these tools is the ability of police officers to use the real or perceived odor of marijuana to justify stops and searches.

Right now, police are allowed to stop an individual or search their vehicle based on the odor of marijuana alone. Police encounters that begin based on the odor of marijuana undermine the right to privacy, and it also enables racial profiling that has been proven to be a serious issue in policing.

Since recreational marijuana use is now legal, it only makes sense to limit the use of the odor of marijuana as a pretext for police stops. Marylanders should not be afraid that police will stop them because of the lingering odor of a now-legal substance.

With your support of Senate Bill 51, we can ensure that we get marijuana legalization right in Maryland, and limit racist police interactions as much as possible.

Sincerely,

Elissa Laitin  
1723 Cody Dr.  
Silver Spring, MD 20902

# **Testimony for the Senate Judicial Proceedings Comm**

Uploaded by: Emily Walker

Position: FAV



## Testimony for the Senate Judicial Proceedings Committee

Thursday, February 2nd, 2023

### SB 51 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

#### FAVORABLE

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

We write to you to express our uttermost support for Senate Bill 51 (SB51) on behalf of Peaceful Resistance in Southern Maryland (PRISM). We are a grassroots social justice organization comprised of life-long Maryland residents. We understand how essential it is that our legislators in Annapolis push for a favorable report on Senate Bill 51 in its current posture.

With marijuana becoming legal in Maryland, we believe it is vital our legislators now prioritize banning searches based on the smell of marijuana, or perception thereof, in order to protect our Black and brown neighbors from being racially profiled and harassed by police. Despite data proving that Black people and white people use marijuana at comparable rates, police arrest Black people at higher rates than white people in *every* county in Maryland<sup>1</sup>. Since PRISM's inception in 2020, we have heard from dozens of people who have been impacted by odor searches. Many community members do not speak up due to their fears of being retaliated against by the police. Although marijuana is now legal in Maryland, unless SB51 is passed, Black and brown people will continue to be disproportionately stopped and searched based solely on the smell of marijuana – a completely legal substance.

Odor searches are an egregious loophole for police to justify racial profiling, and they must be abolished. We urge a favorable report on SB51 to ensure that every person in Maryland, regardless of race, has the freedom to exercise their rights without fearing police harassment.

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<sup>1</sup> <https://www.aclu-md.org/en/press-releases/every-county-black-people-more-likely-be-arrested-marijuana-possession>

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Erica Palmisano

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 12. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Erica Palmisano  
5580 Vantage Point Rd, Apt 5, Columbia, MD 21044  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

**In Support of SB 51 CCJR.pdf**

Uploaded by: Heather Warnken

Position: FAV



**TESTIMONY IN SUPPORT OF Senate Bill 51:**

**Criminal Procedure – Reasonable Suspicion and Probable Cause – Cannabis**

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Heather Warnken, Executive Director, Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: February 1, 2023

Good afternoon Chairman Smith and members of the Committee. My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law's Center for Criminal Justice Reform. The Center is dedicated to supporting community driven efforts to improve public safety and address the harm and inequity caused by the criminal legal system, and we are grateful for this opportunity to testify in support of Senate Bill 51.

The Fourth Amendment states that people have the right to be secure in their persons, houses, papers, and effects against unreasonable searches. Unfortunately, the privacy rights enshrined in the Constitution and the Maryland Declaration of Rights are only as strong as the doctrines and laws that have developed around them. In the case of the Fourth Amendment, a long list of judicially-crafted exceptions combine to allow the government to stop and search both people and their automobiles, even when they are engaged in lawful activities. Moreover, the courts have openly endorsed the use of these exceptions as a pretext for the police to conduct fishing expeditions that might turn up evidence of criminal activity. See e.g., *Whren v. United States*, 517 U.S. 806 (1996).

For many now well-documented reasons, this leads to the overcriminalization and invasion of dignity and privacy rights of Black Marylanders and other persons of color at greatly disproportionate rates. As highlighted by other witnesses, the statistics are staggering, and the case law further demonstrates why weak protection for privacy rights hurts poor communities of color the most. In the case *In re D.D.*, 479 Md. 206 (2022), the Maryland Court of Appeals found that an officer smelling marijuana had the right to detain five young men and that, because they were dressed in “baggy clothes” and had “evasive body language,” the officer could search them as a safety precaution.

Furthermore, in late 2022, the now Maryland Supreme Court held in *Tyrie Washington v. State of Maryland* that law enforcement officers had reasonable articulable suspicion to stop based on a defendant's unprovoked flight from officers in a “high-crime area”, notwithstanding a lengthy accounting for the realities of disproportionate police violence and harassment of Black residents, leading to uprisings in Baltimore and beyond.



These cases and more demonstrate why it is imperative for the legislature to act, and not to wait for the courts, which have been inconsistent and insufficient in addressing these issues alone.

We also believe this bill to be in furtherance of, rather than a hindrance to, public safety. The enormous discretion and power furthered by officers' widespread uses of odor searches leads not only to rights violations, but lazy approaches to policing that can jeopardize the ability of evidence to hold up in court. This discretion too often invites officers to manufacture justifications or include lies in their testimony, a disturbingly pervasive phenomenon. See, for example, findings and recommendations regarding the prevalence of disregard for truth in the recent independent investigation surrounding the origins, causes and consequences of the Gun Trace Task Force:

*“It should be obvious that the integrity of our criminal justice system relies on the honesty and integrity of police officers. Providing false or misleading information to BPD, prosecutors, or courts for whatever purpose undermines one of the central pillars of our system of criminal justice. And yet our investigation revealed that for many officers, the practice of submitting false, incomplete, or misleading information in police reports, in applications for search warrants, and in court testimony began early in their careers. According to the witnesses we interviewed, this has been a widespread problem. We have no reliable way to measure the extent to which it remains.”*

<https://static1.squarespace.com/static/5e25f215b3dbd6661a25b79d/t/61dfb04407c9d81f367972d8/1642049639956/GTTF+Report-c2-c2-c2.pdf>

Also counter to public safety, overreliance on searches based on the odor of a now legal substance can distract police from more effective evidence based policing strategies and true investigative work. The continued use of police resources on marijuana is deeply problematic especially given the abysmally low clearance rates for serious violent crime in jurisdictions like Baltimore, Prince George's County and more, where arrests of disproportionately Black residents for low level offenses continue to produce tremendous volume of cases and immeasurable community harm.

Given the recent tragic events that led to the horrific death of Tyre Nichols, and countless other documented incidents in Baltimore and throughout the country, it is imperative that we act to limit unnecessary interactions with law enforcement, and the harassment and violence it too often leads to with impunity, especially when not captured on film. This is vital to the uphill work of building trust between police and the communities they are supposed to serve. The use of this justification alone has long been a significant impediment to community collaboration and trust, especially given the insufficiency of scent alone as a basis for determining whether an individual is in possession of marijuana at all.

This bill is a logical and needed extension of the legislature's work to legalize recreational marijuana, to address the pervasive racial disparities in the system, and to further real public safety.

For these reasons, we urge a favorable report on Senate Bill 51.

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Holly Powell

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of 46. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Holly Powell  
2308 Cambridge Street  
Baltimore, Maryland 21224  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **SURJ Marijuana Odor Search 2023 2 1.pdf**

Uploaded by: Jan Kleinman

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of MD District 40. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t. Possession of too large an amount of cannabis is still illegal, so police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities--particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

Besides, are we not trying to build trust between ordinary citizens and police? If just a whiff of cannabis is grounds for suspicion, police officers will mistrust anyone they see when that odor reaches their noses. Rather, we need good communication with our voices, not our noses! Let’s encourage police officers and citizens to speak to one another. Trust is crucial for our community safety.

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,  
Jan Kleinman  
816 Union Ave.  
Baltimore, MD 21211  
Showing Up for Racial Justice Baltimore

**Bill51letterpdf.pdf**

Uploaded by: Jane Tamagna

Position: FAV

Subject: Please Ban Odor Stops & Searches & Promote Racial Justice!

My name is Jane Tamagna and I am one of your constituents. I have lived in Middletown, Maryland for 37 years. I have followed with deep concern and grief the frequent police actions that disproportionately target and affect people of color, with many of these actions resulting in loss of life either through violent death or unjust prison sentences. Many of these actions begin with an unjustified stop.

Bill 51 offers an important tool to assure Maryland recognizes that odor stops are unjustified stops, contribute to racial profiling, and divert critical resources away from true public safety.

As an example, between 2018-2019 Prince George's County cleared only 18% of all violent crimes. During the same period, the County's police force arrested nearly 3,000 people for possession of marijuana over 10 grams – 90% of whom were black. Yet only 20 cases resulted in a guilty conviction. While officers were attending to 2,980 odor stop cases that did not result in a guilty conviction, 82% of all violent crimes went uncleared.

Ending odor stops contributes to trusted policing that does not disproportionately affect people of color, increases resources needed to address violent crime, and offers one small step leading to the day when families of color do not have to have “the conversation” with their children.

It is the logical and necessary extension of the legislature's work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session. Marylanders should not fear police interactions because of the lingering odor of a now-legal substance.

Thank you for your leadership and willingness to make bold change that meets the moment we are in! I know that with your support of Senate Bill 51 we can ensure that we get legalization right in Maryland and protect Marylanders from unnecessary police interactions and violations of their rights.

Sincerely,  
Jane Tamagna

**SB0051 Testimony .pdf**

Uploaded by: Jared Schablein

Position: FAV

TESTIMONY FOR SB0051

**Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**Bill Sponsor:** Senator Carter

**Committee:** Judiciary Proceedings

**Organization Submitting:** Lower Shore Progressive Caucus

**Person Submitting:** Kris Urs, LSPC Community Organizer

**Position:** FAVORABLE

I am submitting this testimony in favor of SB0051 on behalf of the Lower Shore Progressive Caucus. The Caucus is a political and activist organization on the Eastern Shore, unaffiliated with any political party, committed to empowering working people by building a Progressive movement on the Lower Eastern Shore.

After decades of proof of the economic and racial harm deliberately caused by the unjust criminalization of marijuana, Marylanders and their legislators have successfully made strides to legalize its consumption.

However, even with the legalization of Marijuana, there still exist dangerous loopholes that can be used to perpetuate the failed “war on drugs.” In reality, this is a war on Black and brown people, as the data has made clear for over half a century. One of the more egregious loopholes left behind is the power vested in the police to conduct traffic stops and searches based solely on their belief that they smelled marijuana. If we want *everyone* to thrive in our beautiful state, we must do away with these laws that unnecessarily harm our most vulnerable populations.

This legal loophole has been used and abused on the Eastern Shore to unjustly target our black and brown residents and perpetuate racial profiling for far too long. As we look forward to marijuana legalization, this body must ensure that the odor, or *perception* of an odor, of a soon-to-be legal substance, without any other behavior, cannot be used to justify a stop and search. For the foregoing reasons, the Lower Shore Progressive Caucus supports this bill and recommends a **FAVORABLE** report in committee.

**SB51Testimony (1).docx.pdf**

Uploaded by: Jill Carter

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter  
In Favor of SB52 Criminal Procedure- Reasonable Suspicion and  
Probable Cause- Cannabis**

**Before the Judicial Proceedings Committee  
on February 2, 2023**

**SB51 will prohibit law enforcement from using the odor of cannabis as the basis for a warrantless search of a person or vehicle.**

**In 2022, Marylanders overwhelmingly approved the legalization of cannabis. Simply sanctioning its usage, however, did not solve the ongoing problem of disparate enforcement of the law, especially in our Black and brown communities.**

**The Fourth Amendment grants individuals a right to be free from unreasonable searches and seizures. However, the Supreme Court has long carved out exceptions for car searches when an officer has probable cause to believe the vehicle contains contraband. Courts have held that the odor of cannabis does not provide probable cause to search the person and/or vehicle. For example, the Supreme Court of Pennsylvania in *Commonwealth v. Barr* recently held that the odor of cannabis is insufficient to conduct a search.**

**Allowing the odor of cannabis to be the basis for a search creates a loophole in probable cause determination as it is being applied after the stop, notwithstanding the fact that cannabis is not the reason for the stop, and the citizen stopped is not under the influence of cannabis. Research demonstrates that police are two (2) times more likely to search Black and other citizens of color during traffic stops than white drivers, even though the data shows that Black and other people of color are less likely to possess illicit drugs and/or other contraband.**

**In traffic stops involving Black drivers, probable cause was used to justify sixty-seven percent (67%) of searches. In traffic stops involving white drivers, probable cause was only used to justify a search forty-six percent (46%) of the time. SB 51 would eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling.**

**In this post-decriminalization period, Maryland court decisions on this issue have been confusing and inconsistent. In 2020, the Court of Appeals (now the Supreme Court) ruled that the odor of marijuana alone does not provide probable cause for an arrest or warrantless search of an individual. The Court reasoned that the odor of cannabis alone does not provide probable cause because cannabis possession has been decriminalized, and because an officer cannot determine the quantity of marijuana in someone's possession based solely upon odor. However, the same Court recently ruled that, while the odor of marijuana does not provide probable cause for a warrantless search and arrest, it does provide reasonable suspicion that the person possess ten (10) grams or more; and therefore, justifies an investigatory stop that could lead to a search.**

**The Maryland legislature needs clarify for the courts that the odor of cannabis alone is not a basis for a stop or the search of an individual or vehicle.**

**I urge a favorable report of SB51.**

Sincerely,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter, Esq.

**\_SB0051\_JoShifrin\_FAV (2).pdf**

Uploaded by: Jo Shifrin

Position: FAV

SB0051\_JoShifrin\_FAV

Date of Hearing: Feb. 2, 2023

Jo Shifrin

Bethesda, MD 20817

**TESTIMONY ON SB0051- POSITION: FAVORABLE**

**Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Jo Shifrin

**OPENING: My name is Jo Shifrin. I am a resident of District 16. I am submitting this testimony in support of SB0051, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**

I am a resident of Bethesda and a Jew. The concept of *tzelem elohim* – the idea that all people are created in the Divine image and therefore are equally precious and worthy of dignity and respect – is central to Judaism. It is so central that our sacred texts teach us that the destruction of one life is the same as destroying the whole world. Unfortunately, in Maryland, we know that lives are destroyed every day through the interactions between the police and people of color.

Since the advent of the War on Drugs, people of color have been disproportionately arrested and convicted of drug possession. Their history of incarceration, even when they have completed serving their time, often prevents them from engaging in the things that we take for granted, like renting a place to live and being employed.

The scent of cannabis is overused as a rationale for searches. Odor stops and searches facilitate racial profiling. In Maryland, police are twice as likely to search Black drivers and their vehicles during traffic stops than white drivers.

An overwhelming majority of Maryland voters have decided that the use of marijuana should be decriminalized. Even with the change in Maryland law, situations would still remain in which police officers would be able to stop and search an individual or their vehicle based on *the officers' assertion* that there was an odor of cannabis. This infringes on everyone's right to privacy. Moreover, given the degree of systemic racism in our country, it is not surprising that Blacks and other people of color have been – and are more likely to continue to be – stopped and searched using this rationale. And, as we know, police stops have led to interactions in which people have been harmed or killed.

Now that the recreational use of cannabis is legal, it doesn't make sense for the odor associated with its use to be the basis for interactions between the people of Maryland and the police. I believe that the removal of these pretextual stops will keep all Marylanders safer. **I respectfully urge this committee to return a favorable report on SB0051.**

**SB0051\_SilverSpringJusticeCoalitionJoannaSilver\_FA**

Uploaded by: Joanna Silver

Position: FAV



**TESTIMONY IN SUPPORT OF SB 51**  
**Senate Judicial Proceedings Committee, February 2, 2023**

**My name is Joanna Silver. I am a resident of Silver Spring, in District 18. I am testifying on behalf of the Silver Spring Justice Coalition in support of SB 51.**

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing. In furtherance of this goal, it is essential that we prohibit officers from relying solely on the odor of cannabis as the basis for reasonable suspicion or probable cause to believe someone is engaged in criminal activity.

The odor of cannabis has long served as a pretext for officers to conduct stops, to prolong stops, and to search in the hopes that they will find evidence of some other criminal activity. We know that the weight of these invasive and often dehumanizing stops and searches falls most heavily on Black and brown community members because they are the ones who are most frequently targeted by police. Where I live in Montgomery County, from 2018 to 2022, Black drivers were the subject of 31% of all traffic stops, despite being only 18% of our population, and Black drivers constituted 43% of all searches conducted during a traffic stop.

These racially-biased stops and searches come at a great cost: in 2021, Black people were the targets of 54% of all use of force incidents by Montgomery County police officers. Now that Marylanders have voted to legalize cannabis, there is simply no excuse to continue to subject so many members of our community to an unnecessary risk of harm.

I want to address two of the excuses we frequently hear for allowing officers to continue to rely on odor alone, particularly in traffic stops. First, pretext traffic stops are not a necessary crime-fighting tool. For example, a [report by the Montgomery County Policing Advisory Commission](#) revealed that of all firearms seized in our county in a recent three year period, less than 5% were seized during traffic stops.

Second, this law will not prevent officers from investigating drivers who are under the influence of cannabis; they simply need some evidence of impairment other than odor. This rule makes sense and does not hamstring officers because we know that odor does not equal impairment.

◆ silverspringjustice.wordpress.com ◆ Facebook: ssjusticecoalition ◆ Twitter: @SilverCoalition ◆  
◆ silverspringjustice@gmail.com ◆

Moreover, in my day job I have been a public defender for over 20 years and I can't remember a single case in which cannabis was the substance that caused my client's impaired driving - it is almost exclusively alcohol and PCP that I've seen in DUI cases. There is simply no excuse to continue the racist practice of odor-based stops and searches in Maryland.

For these reasons I respectfully urge you to issue a favorable report.

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: John Ford

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

I am a resident of **MD District 46**. In the wake of videos of drug and weapon planting captured by body cameras, the Gun Trace Task Force scandal, the DOJ investigation resulting in the consent decree, and the details of police reports contradicting the video evidence in cases like George Floyd's and Tyre Nichols, as well as after personal experiences of police dishonesty during traffic stops, I do not trust the Baltimore Police. I do not trust them to be telling the truth and not simply taking advantage of a loophole in probable cause when documenting the "smell of cannabis", either when walking or driving or in any other circumstances in a world where cannabis smell could be anywhere for many reasons. For those reasons, **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**

Many police encounters begin with what courts call "reasonable suspicion": a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it's a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won't: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can't legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia's legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

**John Ford**  
**3301 Fleet St**  
**Baltimore, MD 21224**

---

<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

**SB0051\_Karen Caplan\_FAV.docx.pdf**

Uploaded by: Karen Caplan

Position: FAV

February 2, 2023

Karen Caplan  
Silver Spring, MD 20902



**TESTIMONY ON SB0051 - POSITION: FAVORABLE**  
**Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Karen Caplan, on behalf of Jews United for Justice

My name is Karen Caplan and I am a resident of District 18, in Silver Spring. On behalf of Jews United for Justice (JUFJ), I am submitting this testimony in support of SB0051, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis. JUFJ organizes 6,000 Jewish Marylanders and allies from across the state in support of social, racial, and economic justice campaigns.

The concept of *tzelem elohim* — the idea that all people are created in the Divine image and therefore are equally precious and worthy — is central to Judaism. Jewish tradition makes it clear that we are obligated to respond when this core value is threatened. As the law currently stands, police officers may stop and search individuals without a search warrant merely because they claim to detect the odor of cannabis, an exception to our constitutional rights. This in itself is a problem in a state where voters have now chosen partial cannabis legalization. It makes no sense for the odor associated with the use of a legal substance to be used as a gateway to entanglement with police and the legal system. The odor of cannabis should not be used as an excuse to perform a warrantless arrest or search of an individual or their vehicle. But it is also a problem of equity because we know that Black and brown people are disproportionately stopped by police, both nationwide and in Maryland. For incidents involving Black drivers, probable cause (including the odor of cannabis) was used to justify 67% of searches, compared to 46% of incidents involving white drivers. There is no way for an officer to prove that they smell cannabis, and of course no way to disprove it either. This leaves people of color significantly more vulnerable to police violence. Our sacred texts tell us “Do not stand idly by the blood of your neighbor” (Leviticus 19:16), and we must not stand idly by as our neighbors are unjustly criminalized and needlessly placed at risk.

The ability of police to pull drivers out of their cars because of the alleged odor of a legal substance leaves a door to discriminatory pretextual stops wide open and makes people of color even more likely to be injured or killed by police — especially during traffic stops — that we know happens far too often.

Driving while under the influence of cannabis remains illegal, and SB005 I will allow police officers to investigate this while still respecting the rights of individuals. By banning odor searches, we can protect Black and brown Marylanders from violence, from unnecessary police interactions, and from unnecessary introduction into a criminal legal system that data makes clear is weighted against them.

**On behalf of Jews United for Justice, I thank you for the opportunity to share our position and respectfully urge this committee to return a favorable report on SB005 I.**

**Choice SUPPORT SB 0051 .pdf**

Uploaded by: Kelly Quinn

Position: FAV



SENATE BILL 51  
Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

February 8, 2023  
POSITION: **SUPPORT**

Dear Chairperson Smith, Vice Chairperson Waldstreicher and Honorable Members of the Committee:

The Choice Program at UMBC supports Senate **Bill 51** introduced by Senator Jill Carter. We urge the Senate Judicial Proceedings Committee to issue a favorable report on this bill.

The Choice Program at UMBC has served Maryland youth who are systems-involved for nearly 35 years. Presently, Choice works with young people and their families in Baltimore City as well as Baltimore, Howard, Prince George's, and Montgomery Counties. Young people often remind us that their past trauma—and worst mistakes—should not define them. Choice serves as an alternative to the school-to-prison pipeline; our primary goal is to reduce the number of Black and Latinx young people who are entangled in the youth legal system. Our model seeks to dismantle racist structures and, instead, employs strengths-based approaches focused on positive relationships and their agency. We hold high expectations for youth and parents as well as high levels of support. These guiding principles are essential in addressing racial inequities at an individual and systemic level.

Maryland's legal system disproportionately ensnares Black and Latinx young people, limiting their life chances in education, vocation, civic engagement, and health and wellbeing. A punitive criminal justice system does not offer young people developmentally appropriate and culturally responsive interventions; it exacerbates stubborn inequities. And, it does not keep Marylanders safer. This session offers the chance to remake our youth legal system to reduce racial and ethnic disparities especially for children and young adults.

We are concerned that the odor of a soon-to-be legal substance should not be used as a pretext for the search of a person or their vehicle. After a stop or vehicle search, it is impossible for officers to prove that they did, in fact, smell marijuana. As such, law enforcement has been given a blank check to conduct spurious searches. Odor search claims are not only highly used, but highly abused. Odor searches facilitate racial profiling. Odor Searches permit needless escalations during routine traffic enforcement and puts youth at risk.

The Choice Program at UMBC respectfully urges this committee to issue a favorable report on SB 51.

## **2.1.23 LDF Written Testimony on SB 51\_Senate Judic**

Uploaded by: Kristina Roth

Position: FAV

New York Office  
40 Rector Street, 5<sup>th</sup> Floor  
New York, NY 10006  
T 212.965.2200  
F 212.226.7592  
[www.naacpldf.org](http://www.naacpldf.org)



Washington, D.C. Office  
700 14th Street, NW, Suite 600  
Washington, D.C. 20005  
T 202.682.1300  
F 202.682.1312

February 1, 2023

***Submitted Electronically***

Chair William C. Smith, Jr.  
Vice Chair Jeffery Waldstreicher  
Senate Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

Re Senate Bill 51 – Criminal Procedure – Reasonable and Probable Cause – Cannabis – **Favorable**

Chairperson Smith and Vice Chair Waldstreicher:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF)<sup>1</sup>, we support Senate Bill 51, which prohibits the odor of cannabis from being the sole evidence for reasonable suspicion or probable cause relating to possession of contraband or other criminal activity. LDF supports SB 51 because the odor of cannabis, possession or suspected possession of cannabis, or presence of money in proximity to cannabis should not serve as a basis for a person or their vehicle to be stopped or searched. In November of 2022, Maryland voters ratified an amendment to the Maryland Constitution to allow the possession and use of cannabis for individuals 21 years of age and older, beginning July 1, 2023, subject to regulation by the Maryland General Assembly. In 2021 the Maryland General assembly passed legislation that sets the contours of legalization, permitting possession of up to 1.5 ounces without penalty. With the implementation of cannabis legalization, police stops and searches based on odor alone should be prohibited. Black Marylanders are disproportionately criminalized for cannabis offenses. The use of cannabis odor as a basis for stops or searches is ineffective, as there is no clear distinction between the odor of cannabis possessed in a lawful amount up to 1.5 ounces or the odor of cannabis that is an amount

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<sup>1</sup> Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF's work to address police violence and misconduct dates back to its inception. *See, Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff's deputies in an attempt to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

that exceeds the lawful threshold. Finally, other states have prohibited the use of odor-based stops and searches, providing precedent for Maryland to build upon.

## **I. Black Marylanders have been disproportionately criminalized for cannabis offenses.**

While Black people use cannabis at the same rate,<sup>2</sup> or less<sup>3</sup> than white people, Black Marylanders are criminalized more often for cannabis offenses. A 2018 report comparing cannabis possession arrests for Black and white people found that Black Marylanders were arrested 2.14 times more than white Marylanders.<sup>4</sup> From 2018-2019, Black Baltimoreans made up 96% of all cannabis possession charges filed even though Black people only represent 60% of the city's population.<sup>5</sup> SB 51 would help make the promise of cannabis legalization in Maryland real for Black people who are more likely to be criminalized, by removing odor as the sole basis for a stop.

## **II. The use of odor-based searches is ineffective where possession of certain amounts of cannabis is lawful.**

Recent legislation and the November 2022 ballot initiative in Maryland rendered cannabis possession and use of up to 1.5 ounces lawful. Thus, odor is an unreliable basis for stops and searches because odor does not differentiate between lawful and unlawful amounts of cannabis. Furthermore, cannabis odor, alone, is not a reliable indicator of the presence of any cannabis. Indeed, in 2020 in *Lewis v. State*,<sup>6</sup> the Maryland Court of Appeals ruled that the odor of cannabis alone does not provide probable cause for a warrantless search of a person because an officer cannot determine the quantity of cannabis in a person's possession and therefore does not have probable cause to make an arrest or search a person. SB 51 is necessary to clarify that the odor of cannabis alone does not provide a reasonable suspicion for a stop.<sup>7</sup> Because certain amounts of cannabis are lawful in Maryland, the mere odor of cannabis alone cannot be a sufficient basis for any law enforcement activity.

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<sup>2</sup> Ezekiel Edwards, Will Bunting, and Lynda Garcia, *The War on Marijuana in Black and White*, American Civil Liberties Union, 21 (June 2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>.

<sup>3</sup> A 2018 national survey found the lifetime prevalence of cannabis use was lower for Black (45.3%) than White (53.6%) adults 18 years or older. See Silvia S. Martin, Luis E. Segura, Natalie S. Levy, et al., *Racial and Ethnic Differences in Cannabis Use Following Legalization in US States with Medical Cannabis Laws*, Jama Network Open, Introduction (Sept. 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8477268/>.

<sup>4</sup> Ezekiel Edwards, Emily Greytak, Brooke Madubonwu, et al., *A Tale of two Countries: Racially targeted arrest sin the era of Marijuana Reform*, American Civil Liberties Union, Table 7, "Black and White Marijuana Possession Arrest Rates and Disparities by State" 32 (2018), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

<sup>5</sup> Neydin Milián, *Time to Put An End to the Racist War on Marijuana*, American Civil Liberties Union Maryland, (Dec. 22, 2022) <https://www.aclu-md.org/en/news/time-put-end-racist-war-marijuana>.

<sup>6</sup> *Lewis v. State*, 233 A.3d 86, 91 (Md. 2020).

<sup>7</sup> See, *In re D.D.*, 277 A.3d 949, 954-55 (Md. 2022). This 2022 decision found that odor of cannabis on a person does provide reasonable suspicion for an investigatory stop.

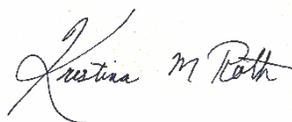
**III. Other states have already prohibited the odor of cannabis as a basis for stops and searches.**

Maryland should follow in the footsteps of other states that recognize odor-based stops and searches can perpetuate racial discrimination and are ineffective. In 2020, even before the commonwealth of Virginia legalized cannabis, Governor Northam signed a bill into law to prohibit law enforcement from conducting a “stop, search, or seizure of a person, place or thing solely on the basis of the odor of cannabis.”<sup>8</sup> And as a part of New York’s legalization of cannabis, the state’s 2021 law includes a provision prohibiting law enforcement from using the odor of cannabis to search a vehicle.<sup>9</sup>

Cannabis legalization in Maryland will take effect July 1, 2023. To ensure that the intent of cannabis legalization is achieved, the legislature must also pass SB 51 to prohibit the use of cannabis odor serve as the sole basis for law enforcement stops or searches.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us via email at [kroth@naacpldf.org](mailto:kroth@naacpldf.org).

Sincerely yours,



Kristina Roth  
Senior Policy Associate

Puneet Cheema  
Manager, Justice in Public Safety Project

Lisa Cylar Barrett  
Director, Policy and Director, Washington  
D.C. Office

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<sup>8</sup> S. 5029, 161st Leg., 1st Spec. Sess. (Va. 2020).

<sup>9</sup> *What you need to know about marijuana legalization in New York*, Legal Aid Society, last updates December 17, 2022, <https://legalaidnyc.org/get-help/wrongful-convictions-clemency-sealing/what-you-need-to-know-about-marijuana-legalization-in-new-york/>.

# **Strib'ble District .docx.pdf**

Uploaded by: LaWann Stribling

Position: FAV



Maryland General Assembly  
Maryland Senate Judicial Committee  
Annapolis, MD - February 1, 2023

Testimony from LaWann Stribling, Strib'ble District LLC

Support: Criminal Procedure-Cannabis - (SB0051)

Thank you for your commitment to end the “intentional” war on drugs. Before I go into the referendum request, I would like to begin with why being treated like a criminal for using nature's medicine should without a doubt end.

In order to understand how we got to this point in law, one needs to know the history behind the War on Drugs. In 1930, Harry Anslinger was appointed by his father to be the first Commissioner of the Federal Bureau of Narcotics, now known today as the DEA. From his appointed positions Anslinger opined for extremely harsh drug laws and ridiculously long prison sentences. This began the foundation that ultimately led to the mass incarceration of people of color, mainly those of African and Mexican descent. From then, Police Departments began to have militarized access to raid homes and businesses of Black and Brown residents which included known musicians, actors and actresses.

Persecuting Black and Brown Residents destroyed the backbone for these families for centuries to come. It is 2022 and we are still suffering from the damage caused by Anslinger's – and later Richard Nixon, Reagan & Clinton's, ramped up War on Drugs. This War on Drugs has created a profitable business for Private Prisons, bail bonds and cities across the country and nation. Anslinger associated cannabis use with the enabling of Black and Brown residents with the belief that it gave us a sense of entitlement for success. Being able to use laws to harass,

incarcerate and murder have created the world we live in today that is full of inequities, inequalities and injustices.

Addressing the criminality in Cannabis today would free those incarcerated, change the racist laws surrounding drugs and plants and give hope to our current and future generations. Social equity in Cannabis would allow families to rebuild what has been stripped from them. Decriminalizing this type of profiling will begin to address the disenfranchisement and inequity would begin to correct the decades of unfairness to many Black and Brown families. It's HOPE, hope that we can live our lives using natural holistic methods for wellness without criminalization and prosecution. To have a way for families to build up wealth and change the climate of poverty, red lining, lack of education, proper medical care, finances and resources.

I aspired to apply to be a processor on the cottage level for cannabis infusions. That dream quickly faded when I began to read the application process. That dream would not come to fruition with current policies that emphasize the need for excessive equity and capital. I do not possess either! I could not afford step 1 in the application process which cuts my family's cottage business dreams down. Providing low barriers of entry into the industry seeks to amend the history of injustices surrounding marihuana, poverty, redlining, mass incarceration and lack of wealth and resources for Black and Brown residents. I'm HOPE, I'm a great example of needing equity, equality and inclusion as a family owned bootstrapping cottage business.

It is past time to correct the foundational racist laws that govern our everyday lives.

I fully support bills to address social equity, home grow, decriminalization and cottage businesses.

<https://www.weresurviving.com/post/cannabis-freedom-day-520>

Harry Anslinger's quotes:

“. . . the primary reason to outlaw marijuana is its effect on the degenerate races “ **---(attributed to) Harry Anslinger during congressional hearings**

“Marihuana leads to pacifism and Communist brainwashing.” — **(attributed to) Harry Anslinger during congressional hearings (era 1947-48)**

“Negro entertainers with their jazz and swing music are declared an outgrowth of marihuana use which possesses white women to tap their feet.” — **statements to Congress by Anslinger, FBN - 1937-50:**

Thank you for allowing my submission,

LaWann Stribling, a Wife, Mom, Entrepreneur, Advocate & Lobbyist  
[linktr.ee/sribbles](http://linktr.ee/sribbles)

[sribbletreats@gmail.com](mailto:sribbletreats@gmail.com)

7720 Jacobs Drive

Greenbelt MD 20770

Deputy Director NORMLMD

[lawann.marylandnorml@gmail.com](mailto:lawann.marylandnorml@gmail.com)

Ref: [Anslinger's Quotes](#)

# **SB51 - Marijuana Odor Search.docx.pdf**

Uploaded by: Lindsay Keipper

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of district 46 and **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.** Thank you for your time, service, and consideration.

Sincerely,

**Lindsay Keipper**

**2425 Fleet St.**

Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpps20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

**1675172976438\_Support SB0051 Probable Cause - Cann**

Uploaded by: Linnie Girdner

Position: FAV

To the Members of the Senate Judicial Proceedings Committee:

I am a resident of Anne Arundel County and live in District 33A. Before I became a trauma-informed therapist, I taught Urban Anthropology to police officers at The American University. I am a member of Showing Up for Racial Justice Annapolis and Anne Arundel County.

I am testifying in support of [SB0051](#) **Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**, which removes the suspected odor of cannabis, and a few other cannabis-related issues, as providing probable cause for warrantless searches.

Privacy rights enshrined in the Fourth Amendment to the U.S. Constitution protect individuals from “unreasonable searches and seizures.” Now that Marylanders have voted to legalize recreational marijuana, it is unreasonable to search individuals or groups based on the odor of a legal substance.

Maryland had about 24,540 murders from 1980 to 2019. Eventually about 16,677 of those were solved. Approximately 7,863 unsolved murders remain on the books in Maryland.<sup>1</sup> Wouldn't law enforcement personnel and resources be better spent in trying to solve these violent crimes rather than making routine traffic stops and checking for the odor of cannabis? Wouldn't it be more reasonable to bring some resolution to the families of these murder victims?

The 14th Amendment to the Constitution provides “equal protection under the law.” Nothing is equal in Maryland or the nation when it comes to marijuana criminalization:

- Despite marijuana being used at about the same rates by Black and white people, Black and Brown people are disproportionately targeted during stops and frisks, because of their race, leading to greater rates of arrests and convictions.<sup>2</sup>
- Black citizens and other People of Color are much more likely to be stopped for small traffic infractions.<sup>3</sup> They have their cars searched more often if the police believe there is an odor of cannabis.<sup>4</sup>
- One rigorous study of ten cities across the country found that white and Black drivers spend the same amount of time in their respective neighborhoods. However, police center their enforcement of speeding in small areas that are

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<sup>1</sup> [Uncovered: Unsolved Maryland Murders.](#)

<sup>2</sup> [A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform](#)

<sup>3</sup> [OLO Report 2022-12 Analysis of Data Montgomery County \(MD\) Traffic Violations Dataset](#)

<sup>4</sup> [Cops Told the 'Smell of Cannabis' Doesn't Justify Stop and Search](#)

more often in neighborhoods of People of Color, leading to more stops in those communities.<sup>5</sup>

- Even in states that have decriminalized and/or legalized recreational marijuana the disparities continue to exist.<sup>6</sup>

The chances of police misconduct increase when small infractions, such as traffic violations, are combined with racial profiling. This puts People of Color at risk – not just of a search, but of their own lives. Think of how Tyre Nichols was beaten to death by police in Memphis.

Our elected officials should take a racial equity lens, in light of the evidence, and consider the privacy rights of all Marylanders and the importance of equal treatment under Maryland law. Racial profiling must be stopped. The passage of SB0051 would be one important step in that direction.

I strongly recommend that you support SB0051.

Thank you for your time, service, and consideration.

Sincerely,

Linda K. Girdner, Ph.D.  
941 Fall Ridge Way  
Gambrills, MD 21054

---

<sup>5</sup> [Police stop Black drivers more often than Whites. We found out why.](#)

<sup>6</sup> [Racial Disparities in the Wake of Cannabis Legalization](#)

**SB51 - favorable.pdf**

Uploaded by: Lisa Bromfield

Position: FAV

February 1, 2023

Senate Judicial Proceedings Committee

Written Testimony

SB51 – Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

Position: Favorable

Dear Senators William Smith, Jeffrey Waldstreicher, William Folden and Committee,

The current legal standards allow police to stop an individual or search their vehicle based on the odor of marijuana alone. Police encounters that begin based on the odor of marijuana undermine the right to privacy and enable racial profiling. It is the logical and necessary extension of the legislature's work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session. Marylanders should not fear police interactions because of the lingering odor of a now-legal substance.

As a Unitarian Universalist I believe that everyone should be treated with respect and dignity. It is neither respectful nor dignified to be stopped and/or searched because of a smell from something legal. Interactions with police where someone feels their rights have been violated or when a person is really afraid can turn out very poorly. People of color and low socioeconomic status have been more likely to receive longer or more severe penalties around drugs and have more to fear from interactions with the police. It is imperative that people do NOT have reason to be afraid of the police when they haven't broken any laws and that we honor people's rights to privacy and to be free from undue search and pursuit. This is why I am asking you to support Senate Bill 51.

Thank you for your leadership and willingness to make bold change that meets the moment we are in! I know that with your support of Senate Bill 51 we can ensure that we get legalization right in Maryland and protect Marylanders from unnecessary police interactions and violations of their rights.

Sincerely,

Lisa Bromfield, RN  
6582 Colebrook Lane  
Middletown, MD 21769

**MBCP\_Favor\_SB51.pdf**

Uploaded by: Lisa Ellis

Position: FAV



Maryland Business & Clergy Partnership

[www.BusinessClergyPartnership.com](http://www.BusinessClergyPartnership.com); [Maryland.bcp@gmail.com](mailto:Maryland.bcp@gmail.com)

**Testimony for the Senate Judicial Proceedings Committee  
Thursday, February 2nd, 2023  
SB 51 - Criminal Procedure – Reasonable Suspicion and  
Probable Cause - Cannabis  
FAVORABLE**

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Lisa Ellis, I am a Marylander, an advocate, and an Executive Board Member of the Maryland Business Clergy Partnership. MBCP is a bipartisan organization with a mission to bridge the gaps between businesses, faith-based communities, elected officials and governments. Our goal is to make a difference in every community throughout Maryland by changing the political climate through policy and advocacy to open up doors for all.

MBCP has led numerous successful campaigns that have produced real change throughout the state. We feel strongly about partnering with businesses, organizations, and activists that are committed to help producing change from within. That is why I am here today to express our support for Senate Bill 51.

After decades of proof of the economic and racial harm deliberately caused by cannabis criminalization, Marylanders and their legislators have successfully made strides to legalize its consumption. But there are still dangerous loopholes left that can be used to perpetuate the “war on drugs”, which is really, as the data has made clear for over half a century, a war on Black, Brown, and working-class people. One of the more egregious loopholes is the police having the power to conduct traffic stops and searches based *solely* on their belief that they smelled cannabis.

Cannabis odor has been used as a loophole to justify racial profiling for far too long. As we look forward to legalization, this body must ensure that the smell, or perception of a smell, of a soon-to-be legal substance, without any other behavior, cannot be used to justify a stop and search.

For the foregoing reasons, I urge a favorable report on Senate Bill 51.

Sincerely,

Lisa Ellis, Executive Board Member  
Maryland Business Clergy Partnership

**SB0051\_Louise Weissman\_FAV.pdf**

Uploaded by: Louise Weissman

Position: FAV

**SB0051\_Louise Weissman\_FAV**

**Date of Hearing: February 2, 2023**

Louise Weissman  
Greenbelt, MD 20070

**TESTIMONY ON SB#/0051: FAVORABLE  
Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Louise Weissman

My name is Louise Weissman. I am a resident of District 22 in Greenbelt. I am submitting this testimony in support of SB0051, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.

I am a member of Oseh Shalom in Laurel, MD, and a Jews United For Justice District 22 Co-Captain. As a 31 year resident of Prince George's County, I am familiar with hearing about encounters between law enforcement and our residents, especially those who are Black and Brown, that escalated because of the real or perceived odor of cannabis.

During the November 2022 elections Maryland voters enthusiastically supported the measure to legalize adult use and possession of marijuana after our state legislators took affirmative action during the 2022 session. This was a tremendous step forward in repairing harms done by the "War on Drugs," which more aptly should be called a war on Black and Brown people. But unfortunately, there are still dangerous and egregious loopholes in the law and tools that can be used by police officers to initiate stops and searches.

Police encounters that begin based on the odor of marijuana undermine the right to privacy and violate the 4th Amendment. The tactic is used to justify racial profiling, intrusive searches, and police escalation. Marylanders should not fear police interactions because of the lingering odor of a now-legal substance. It is only a logical extension of the State's legislators' action and voter approval last year, that Maryland lawmakers this year ensure law enforcement can no longer use this loophole.

I respectfully urge this committee to return a favorable report on SB0051.

**Mary Ann SB51 testimony.pdf**

Uploaded by: Mary Ann Ford

Position: FAV

To: Judiciary Committee Chair Smith, Vice Chair Senator Waldstreicher and Committee Members

A Favorable Vote for SB 51

I am a constituent of Senator Folden in District 4. Here in Frederick County as elsewhere in the country we mourn the death of another black man at the hands of police. Frederick County officials and law enforcement heads, Sheriff Jenkins, Chief Ladino have spoken out on Tyree Nichol's death by Memphis police officers, all pleading for a change in police practices and culture.

All ask what can be done to stop this kind of police violence: we know it can happen in Frederick County. More training? Not so long ago in 2008, trained correctional officers severely beat an inmate at Roxbury Correctional Institute where I was employed as a social worker. As a parent and grandparent of bi-racial children I live with the fear even here that a stop and search police encounter will turn violent. My children live with that fear every day even though they have no police records: they are just people of color.

SB 51's proposed ban on police stops and searches solely on the odor of marijuana is something that can be done immediately to get at the problem of aggressive police action that deepens mistrust of law enforcement and prejudices against people of color. And at this time with recreational use of marijuana on the books there can be no reasonable cause for such a stop.

It seems SB 51 is a bill on which committee members regardless of party affiliation as well as citizens of different parties can unite. I ask for a favorable vote on SB 51.

Mary Ann Ford

3702 Buckeystown Pike

Buckeystown, MD 21717

Member of the RISE Coalition of Western Maryland

# **M Badeker\_SB51 - Marijuana Odor Search.pdf**

Uploaded by: Melissa Badeker

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 8. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Melissa Badeker  
3020 Linwood Avenue, Parkville MD 21234  
443-977-7596  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **SB 51 Odor of Cannabis Favorable.pdf**

Uploaded by: Michele Hall

Position: FAV



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 51—Criminal Procedure—Reasonable Suspicion &**

**Probable Cause--Cannabis**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: February 2, 2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 51. An essential final piece to cannabis legalization is limiting the role that now legal cannabis can play in police investigations and, in turn, infringement on the citizenry's Fourth Amendment rights. Legislation this session must explicitly preclude the police from relying solely on the odor of marijuana, simple possession of marijuana, or possession of marijuana in proximity to money, to conduct a stop, search, or arrest of a person, or to search a vehicle. New York (Attachment A) and Virginia (Attachment B) have similar legislation. It is imperative that SB 51 becomes law.

Maryland's 2014 decriminalization bill did not explain what role the odor or possession of marijuana was to play in police-citizen interactions in the post-decriminalization world. The result is that in the past eight years countless people have been stopped, searched, and arrested based on the odor of marijuana and/or the possession of a small amount of marijuana—conduct that does not in and of itself indicate someone is engaged in criminal conduct. The Supreme Court of Maryland (formerly the Court of Appeals) made clear in June 2022 with its decision in *In re D.D.*, 479 Md. 206 (2022), that the odor of marijuana alone could still support a stop of an individual because marijuana remained contraband. Even with legalization of up to 1.5 ounces of marijuana, there is still some amount of marijuana that is contraband and therefore the logic of *D.D.* remains sound: because there is some amount of cannabis that is illegal, it can be used to support an officer's reasonable suspicion of criminal activity and thus a stop under the Fourth Amendment.

If the Legislature does not limit police action based on the odor or possession of marijuana, people will continue to be stopped, searched, and arrested based on legal conduct. As the legal marijuana industry continues to expand, this will create an unacceptable violation of civil liberties, and it will invite biased policing, because police will use the odor of marijuana as a pretext for otherwise illegal, race-based stops, searches, and arrests. On January 25, 2023, a civil suit was filed against the Baltimore County Police Department for excessive use of force against a family of five which all began based on the odor of marijuana, which the officers alleged they could smell when driving past a car with rolled up windows. (Attachment C) Without action by the General Assembly, Marylanders will continue to fall victim to police violence based on the odor of cannabis alone—a now legal product.

Not only is it a problem that under the status quo individuals can be stopped by the police for the legal smell of cannabis, but “there is no way to challenge or verify what the officer smelled, no way to test whether a person actually smelled of marijuana,...and no way to control for the fully legal and otherwise non-criminal or second-hand ways someone could come to smell like marijuana.” *Lewis v. State*, 470 Md. 1, 24 (2020). In fact, a recent article in the San Francisco Chronicle detailed how the San Francisco police disproportionately relied on cannabis related fact such as “smell,” “odor,” and “marijuana” to justify stops and searches of Black individuals where no contraband was ultimately recovered. (Attachment D)

Additionally, even post-legalization, possession of some amounts of marijuana will remain subject to civil penalties and will therefore be contraband. Absent a legislative limitation, this leaves open the possibility that police can continue to search vehicles based on the odor of marijuana, because under the *Carroll* doctrine officers can conduct a warrantless roadside search of a vehicle whenever they have probable cause to believe it contains contraband. *Robinson v. State*, 451 Md. 94 (2017). If the Legislature does not limit the role marijuana plays in police investigations at the same time as legalization, Marylanders’ cars will continue to be searched in the course of any traffic stop based on possession of, mere proximity to, or lingering scent of, a legal substance. This will undermine the entire legalization regime.

A key concern remains what the odor of marijuana should mean when an officer suspects an individual is driving a motor vehicle while impaired by drugs. In that context, officers would still need to have some initial basis to suspect that a person is impaired before stopping them. This bill

makes explicit that the odor of cannabis can be considered as part of the totality of the circumstances to support an officer's observations of suspected impairment; it simply cannot be the sole basis for a stop to investigate driving under the influence, because the odor of cannabis alone is not indicative that someone is an impaired driver.

If the General Assembly fails to limit the use of the odor of cannabis to support stops, seizures, and searches, it will endorse a two-tiered system of legalized cannabis and justice, wherein Black people will be disproportionately criminalized, stopped, and searched for partaking in a legal substance. Making clear from the outset that police cannot stop, search, and arrest people, or search vehicles, based only on the odor or simple possession of cannabis (1) ensures that people's rights are not infringed upon for legal conduct, (2) ensures that police do not continue to use the odor of cannabis to disproportionately stop, frisk, and search people and vehicles in Black and Brown communities, and (3) and prevents another decade of litigation to answer the question of what is lawful police conduct post-legalization. We urge the General Assembly to pass SB 51 to make legal cannabis use without the encroachment of law enforcement a reality for all Marylanders.

**For these reasons, the Maryland Office of the Public Defender strongly urges this Committee to issue a favorable report on SB 51.**

---

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.  
Authored by: Michele D. Hall, Assistant Public Defender | [michele.hall@maryland.gov](mailto:michele.hall@maryland.gov)**

**ATTACHMENT A**

McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part Three. Specific Offenses  
Title M. Offenses Against Public Health and Morals  
Article 222. Cannabis

McKinney's Penal Law § 222.05

§ 222.05 Personal use of cannabis

Effective: March 31, 2021

[Currentness](#)

Notwithstanding any other provision of law to the contrary:

1. The following acts are lawful for persons twenty-one years of age or older: (a) possessing, displaying, purchasing, obtaining, or transporting up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis;
  - (b) transferring, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis;
  - (c) using, smoking, ingesting, or consuming cannabis or concentrated cannabis unless otherwise prohibited by state law;
  - (d) possessing, using, displaying, purchasing, obtaining, manufacturing, transporting or giving to any person twenty-one years of age or older cannabis paraphernalia or concentrated cannabis paraphernalia;
  - (e) planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with [section 222.15](#) of this article; and
  - (f) assisting another person who is twenty-one years of age or older, or allowing property to be used, in any of the acts described in paragraphs (a) through (e) of this subdivision.
2. Cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure or forfeiture of assets under article four hundred eighty of this chapter, [section thirteen hundred eleven of the civil practice law and rules](#), or other applicable law, and no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention.
  3. Except as provided in subdivision four of this section, in any criminal proceeding including proceedings pursuant to [section 710.20 of the criminal procedure law](#), no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:

- (a) the odor of cannabis;
- (b) the odor of burnt cannabis;
- (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article;
- (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in this article;
- (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or
- (f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with [section 222.15](#) of this article.

4. Paragraph (b) of subdivision three of this section shall not apply when a law enforcement officer is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs or the combined influence of drugs or of alcohol and any drug or drugs in violation of [subdivision four](#) or [subdivision four-a of section eleven hundred ninety-two of the vehicle and traffic law](#), or [paragraph \(e\) of subdivision two of section forty-nine-a of the navigation law](#), or [paragraph \(d\) of subdivision one of section 25.24 of the parks, recreation and historic preservation law](#). During such investigations, the odor of burnt cannabis shall not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.

#### **Credits**

(Added L.2021, c. 92, § 16, eff. March 31, 2021.)

McKinney's Penal Law § 222.05, NY PENAL § 222.05

Current through L.2022, chapters 1 to 841. Some statute sections may be more current, see credits for details.

**ATTACHMENT B**

West's Annotated Code of Virginia  
Title 4.1. Alcoholic Beverage and Cannabis Control (Refs & Annos)  
Subtitle II. Cannabis Control Act (Refs & Annos)  
Chapter 13. Prohibited Practices; Procedural Matters

VA Code Ann. § 4.1-1302

§ 4.1-1302. Search without warrant; odor of marijuana

Effective: July 1, 2021

[Currentness](#)

A. No law-enforcement officer, as defined in § 9.1-101, may lawfully stop, search, or seize any person, place, or thing and no search warrant may be issued solely on the basis of the odor of marijuana and no evidence discovered or obtained pursuant to a violation of this subsection, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.

B. The provisions of subsection A shall not apply in any airport as defined in § 5.1-1 or if the violation occurs in a commercial motor vehicle as defined in § 46.2-341.4.

**Credits**

Acts 2021, Sp. S. I, c. 550, cl. 1, eff. July 1, 2021; Acts 2021, Sp. S. I, c. 551, cl. 1, eff. July 1, 2021.

VA Code Ann. § 4.1-1302, VA ST § 4.1-1302

The statutes and Constitution are current through the 2022 Regular Session and include 2022 Sp. Sess. I, cc. 1 to 22.

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**ATTACHMENT C**

MARYLAND

# THE DAILY RECORD

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## Lawsuit: Baltimore County police beat 5 family members after claiming to smell pot

By: Madeleine O'Neill ◉ January 25, 2023

A new federal civil rights lawsuit claims that Baltimore County police officers violently beat five members of the same family after claiming to smell an odor of marijuana coming from a parked vehicle with its windows up.

The family went out to dinner on Jan. 25, 2020, to celebrate their daughter's upcoming 18th birthday when they were stopped by the officers, according to the complaint.

What followed was a "gross display of excessive force," said Hannah Ernstberger, the lawyer representing the family. The complaint alleges that the Westminster family's two parents, their daughter and adult son, and a cousin were all assaulted by the officers and suffered injuries.

All five were also arrested and charged with crimes, but the charges against each were later dropped or placed on the stet docket.

The complaint names nine Baltimore County police officers and refers to extensive body camera footage of the incident.

According to the lawsuit, Shaneris Nalls, now 20, and three female friends were sitting in a parked vehicle at about 7:30 p.m. after having dinner at to celebrate her birthday at City View Bar & Grill on Security Boulevard.

Two police officers drove by and approached the vehicle. One of the officers, Evan Vicarini, claimed that he could smell marijuana coming from the vehicle, though its windows were rolled up and other cars were nearby.

Vicarini would later tell another officer, "'We drove by and they gave us the (expletive) crim look,' seemingly admitting that the officers stopped the vehicle and the occupants based on appearance alone," Ernstberger wrote in the complaint.

Vicarini told Nalls that if she handed over marijuana she would be free to leave without a citation, the complaint claims. Nalls handed over a joint, but Vicarini believed there was more inside the vehicle and ordered the passengers out.

Nalls's mother, Dayaneris Dmeza, approached to speak with Vicarini. When Dmeza's husband, Shamdu V. Nalls, and son, Shamdu C. Nalls, also arrived, Vicarini told the other police officers who had responded to "hook 'em" if "they start to get out of hand," according to the complaint.

Shaneris Nalls and her mother approached their vehicle to warm up. Vicarini told Dmeza to back up, grabbed her hoodie and slammed her into the side of the vehicle, the complaint claims.

Shaneris Nalls tried to step in, but Vicarini threw her to the ground and kneeled on top of her before handcuffing and arresting her.

Another officer, Anthony Vitacco, then slammed Dmeza into a metal fence near the vehicle. Dmeza's husband, Shamdu V. Nalls, tried to intervene nonviolently, according to the complaint, and was punched multiple times by Vicarini.



Shaneris Nalls, in white, and her mother, Dayaneris Dmeza, in navy, stand at center. Shamdu V. Nalls, in sunglasses, and Shamdu C. Nalls, wearing a blue hat, stand behind the two women. Nehemiah Lember stands at the far right looking out of the frame. (Contributed photo)

Other officers then slammed him to the ground, where he was beaten, kicked and Tased by four officers while his hands were behind his back. One officer kicked him in the face and he lost consciousness before being dragged into a nearby police vehicle and Tased again, the complaint claims.

A cousin, Nehemiah Lember, tried to check on Dmeza when four officers violently forced him into the metal fence and onto the ground. Multiple officers placed their hands around Lember's neck or used their arms in an effort to choke him while his hands were behind his back, according to the complaint.

Finally, the couple's son, Shamdu C. Nalls, rushed past the officers with his hands raised to check on his mother. As officers grabbed him, he lost his balance and fell into one of the officers. Another Tased Nalls and continued Tasing him after he had fallen to the ground, the complaint alleges.

The complaint also claims that on multiple occasions, the responding officers put their body weight on top of the members of the family they were arresting, causing difficulty breathing.

All five of the family members were taken to the police precinct and charged with crimes. According to the complaint, Shaneris Nalls was charged with possession of marijuana and her brother and cousin were charged with assault on a law enforcement officer and resisting arrest. The charges were ultimately dismissed, Ernstberger wrote.

Dmeza was charged with failure to obey a lawful order and disorderly conduct and her husband, Shamdu V. Nalls, was charged with assault on a law enforcement officer and resisting arrest. Their charges were placed on the stet docket, court records show.

The complaint claims that body-worn camera footage also captured officers Vitacco and Vicarini conspiring to create a "fabricated story" about the arrests in their statement of probable cause. One officer covered Vitacco's body camera in an effort to muffle their conversation, the complaint alleges.

All of the family members were injured during the arrests. Shamdu C. Nalls and Dmeza suffered concussions, according to the complaint, and Shamdu V. Nalls suffered a broken bone near his eye.

Ernstberger said the family believes the incident was at least partially motivated by race. Shamdu V. Nalls is African American and Dmeza is Hispanic.

The family continues to struggle with issues related to post-traumatic stress disorder, Ernstberger said.

The family filed complaints with the Baltimore County Police Department a few days after the incident. In December 2021, they received a letter that said "the officer was in violation of departmental rules and regulations" and that "corrective administrative action will be initiated," but provided no other information. A copy of the letter is included with their lawsuit.

The suit brings claims of excessive force, false arrest and malicious prosecution. It also raises a *Monell* claim against Baltimore County for failing to train and supervise the officers.

Spokeswomen for the county and for the police department declined to comment.

Lawmakers this year are considering legislation that would prohibit police officers from citing the odor of marijuana as the sole basis for reasonable suspicion or probable cause, with the exception of investigations for impaired driving. Marijuana will become legal in Maryland on July 1.



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BALTIMORE COUNTY

BALTIMORE COUNTY POLICE DEPARTMENT

CANNABIS

EXCESSIVE FORCE

FEDERAL CIVIL RIGHTS LAWSUIT

MARIJUANA

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**ATTACHMENT D**

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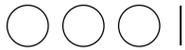
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BAY AREA // SAN FRANCISCO

# S.F. police often use these marijuana-related words to justify unfounded searches of Black people

Susie Neilson, Justin Phillips

Updated: Jan. 23, 2023 7:56 a.m.



San Francisco police officers regularly say they suspect marijuana or smell a suspicious odor to justify unfounded searches of Black people, an analysis finds.

Yalonda M. James / The Chronicle

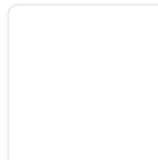
San Francisco police officers regularly claim they suspect marijuana or smell a suspicious odor to justify unfounded searches of Black people in the city, a Chronicle analysis of more than three years of stop data has found.

The data sheds light on the reasons police give for conducting fruitless searches of Black residents — mostly in cars but also on foot — and raises questions about whether the city's decision [to end certain kinds of lower-level police stops](#) will make any

difference.

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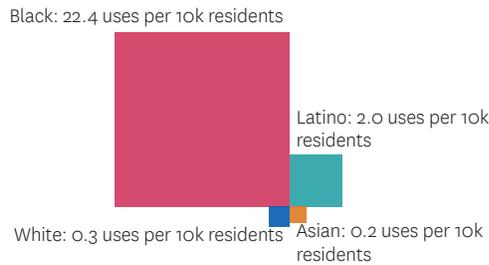
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The Chronicle evaluated the terminology that San Francisco police used to explain the unfounded searches of approximately 8,000 people between July 2018 and September 2021, from a total of over 200,000 stops conducted during that time and about 39,000 searches. We included all encounters where police conducted a search that resulted in no arrests or citations and yielded no “contraband” (weapons, drugs or other items suggestive of criminal activity).

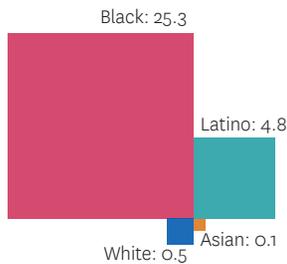
### When San Francisco police search people and don't find anything, how do they justify it?

#### Words with the *highest* disparity between Black and white people

Police unsuccessfully searched Black residents — using “smell” in their justification of the search — at 85 times the rate of white residents...



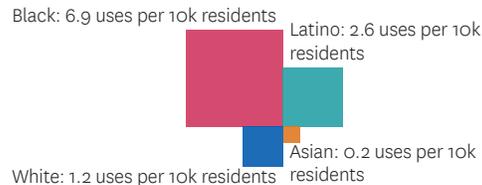
... “odor” at 54 times the rate...



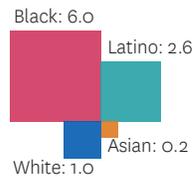
...and “marijuana” at 54 times the rate

#### Words with the *lowest* disparity between Black and white people

Police unsuccessfully searched Black residents — using “him” in their justification of the search — at 6 times the rate of white residents...



... “pocket” at 6 times the rate...



...and “tools” at 6 times the rate

In one field of the data, labeled “basis for search narrative,” we found officers frequently employed the words “smell,” “marijuana” and other drug-related terms during searches of Black people, even if they indicated in the data that they did not find any drugs and took no action as a result of their searching.

Officers employed the word “marijuana” in 269 unsuccessful searches of Black people, compared to 38 mentions for white people, despite the fact that Black people make up just 5% of the city’s population and white people make up 51%.



Fifth & Mission

How SFPD Language Reveals Racial Bias

A Chronicle analysis of more than three years of police data has found that the San Francisco officers used terms like "marijuana" and "baggy" c



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In these unsupported encounters, police used the word “smell” in searches of Black residents at 85 times the rate of white people. They used “marijuana” to search Black people at 58 times the rate of white people. Officers were also disproportionately likely to use loaded words such as “firearm,” “gun,” “crime” and “baggy” to justify frisking Black people in searches where they came up empty-handed.

The words with the lowest Black-white disparity, on the other hand, tended to be more procedural (though because police search Black people at such high rates, they used all terms more for Black people than white). These included “tools,” “pocket” and “weapon.”

Very few white people were subjected to an unsuccessful search related to marijuana or odor, showing how San Francisco police officers’ selective enforcement for lower-level infractions may contribute to their vastly disproportionate stop and search rates for Black residents.

“It’s not surprising that (The Chronicle) analysis appears to show that S.F. Police who are making these unwarranted stops are more suspicious of people of color,” San Francisco Public Defender Mano Raju said via email. “The language police use in these reports is revealing, and lends further credence to what we already know — that pretext stops are racially biased and inflict disproportionate harm on people of color.”

The San Francisco Police Department did not respond to requests for comment.

The Chronicle's findings come amid ongoing discussions about how to reduce the frequency with which people of color are subjected to police bias. In San Francisco specifically, Black people were about six times as likely to be stopped by police as white people in 2020, and 10 times more likely to be searched as a result of a stop. And while white people were more likely to be in possession of illegal substances when searched, Black people are more likely to be subjected to physical force by police, according to a state-level advisory board tasked with reducing police bias.

San Francisco's disproportionate stop and search rates make it an outlier even in California, where Black people are disproportionately stopped by every law enforcement agency reporting data to the state, [as a previous Chronicle analysis found](#).

To curb this widespread bias, on Jan. 11, the San Francisco Police Commission [approved a draft of a law](#) restricting "pretextual" traffic stops, in which police stop drivers for minor violations like expired registration tags or a broken taillight in order to investigate probable criminal activity. Meanwhile, state Sen. Steven Bradford, D-Gardena (Los Angeles County), is rallying support for Senate Bill 50, which would [outlaw several forms of pretextual stops](#) and is a rehash of a bill he introduced but that failed to pass last year.

The data we analyzed included all stops, not just those made under specific "pretextual" codes as defined by the commission.

During the Jan. 11 Police Commission meeting, more than 20 community members testified that over-policing causes both the possibility of [police brutality](#) and a toxic environment where marginalized communities have reason to distrust law enforcement.

One caller described being pulled over in the city's Bayview neighborhood for having "heavily tinted" back windows. She said an officer posed "uncomfortable" questions to her, like whether her boyfriend was a criminal and how often she commits crimes in the car she was driving. The caller, who admitted to being on parole at the time of the police stop, said her vehicle was searched and officers found a small can of pepper spray, which led to them using "excessive force" while removing her from her vehicle.

The Bayview contains the city's highest [concentration of Black residents](#), despite the fact that San Francisco's overall Black population has been steadily shrinking over the past 60 years for [a variety of interrelated and often complex reasons](#), including racial bias.

"I lost my job, my car," the caller said. "I did nothing wrong that day and that stop change(d) my life forever."

Another speaker, William Palmer, the executive director of "Life After Next," a re-entry program for the formerly incarcerated, and a member of the Sheriff's Department Oversight Board, shared his own story. Palmer was also on parole at the time.

His account goes something like this: He was pulled over by a San Francisco police officer and was forced to exit his car and sit on the curb while police conducted a search of his vehicle.

"For a person on parole, that's anxiety-filling, that's trauma-triggering and was just disrespectful," he said, adding that police let him go without a citation. "I am a survivor of contact with police."

Not everybody can say the same. Mapping Police Violence, a research and advocacy group that tracks police killings nationwide, found police [killed nearly 600 people in traffic stops](#) between 2017 and 2022. Black people represent only 13% percent of the U.S. population, but accounted for 28% of people killed in traffic stops.

Brian Cox, director of the Integrity Unit at the San Francisco Public Defender's Office, said his office's clients experience these disparities all the time.

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#### Drought Map

#### Track water shortages and restrictions across Bay Area

Updated to include drought zones while tracking water shortage status of your area, plus reservoir levels and a list of restrictions for the Bay Area's largest water districts.

"They're tired of being harassed by police, they are tired of being stopped for, sometimes, what is effectively driving while Black, or being detained and searched constantly," Cox said. "In a place like San Francisco where there is a stated commitment to progressive values, the fact that this happens just goes against that commitment quite substantially."

Now that San Francisco has approved a draft of its pretext stop policy, the policy will move to meet-and-confer sessions between the city and the San Francisco Police Officers Association, which allows the union to weigh in on policy changes. After these sessions are complete, the Police Commission will vote again on the final version of the policy.

Los Angeles, Berkeley, Philadelphia, and Washington, D.C., meanwhile, are cities that have already passed legislation to limit these kinds of police interactions.

While the results of pretext stop bans in different cities are as varied as the policies themselves, the Los Angeles Times [reports](#) that after the Los Angeles Police Department policy was implemented in March 2022, it was followed by an almost immediate decline in police stopping people for minor violations, and officers were conducting far fewer searches during these stops.

Police stop disparities are baked into the historic origins of American law enforcement, said Chauncey Smith, a senior manager of Reimagine Justice and Safety for the racial justice-focused nonprofit Catalyst California.

“Today, what we have are these low-level infractions that can be used by present day officers to stop people of color for relatively innocuous things that pose little to no safety risk,” he said. “For generations there has been significant distrust... when it comes to law enforcement and its ability to keep all Californians safe. And this is rooted in a long history of racism embedded in our country’s approach to law enforcement.”

Partially because of this history of distrust, many Black people find it difficult to openly discuss their experiences with police, said Cox.

“Not only is it difficult for people to talk about it when it happens to them because of having to relive that trauma, but there’s a fear of retaliation, and a fear that there is nobody out in their community to protect them if they say something negative about the police,” Cox said. “They think about how all the civilian oversight boards in the world can’t stop that specific officer from doing something to them again.”

Saundra Haggerty, a member of Glide, a San Francisco-based organization that focuses on social justice issues, said she volunteered to share her story because exposing disparities in police stops is directly tied to her work.

One night in June 2020, she was driving through San Francisco’s posh Marina neighborhood when a police cruiser began following her. Haggerty said she was driving the speed limit, which made it all the more frightening when the police car’s lights began flashing in her rearview mirror.

According to Haggerty, a tense exchange ensued when the officer who pulled her over pointed out that her tail light was broken and then grew frustrated over her refusal to roll down her window completely during their interaction.

“I was thinking about my own safety,” recalled Haggerty, who said that she was eventually let go without a citation. “It’s not that I live life not thinking about how I’m a Black woman in this city, but there are moments where you know you’re going to get reminded that you are. ... That cop behind me was one of those moments, and I knew it.”

*Susie Neilson and Justin Phillips are San Francisco Chronicle staff writers. Email: [susie.neilson@sfchronicle.com](mailto:susie.neilson@sfchronicle.com), [jphillips@sfchronicle.com](mailto:jphillips@sfchronicle.com) Twitter: [@susieneilson](https://twitter.com/susieneilson), [@JustMrPhillips](https://twitter.com/JustMrPhillips)*

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Written By  
**Susie Neilson**

Reach Susie on

Susie Neilson is a data reporter for The San Francisco Chronicle. Previously, she was a science fellow at Business Insider, covered COVID-19 and criminal justice for KQED and worked as a private investigator at the Mintz Group. Her work has also appeared in NPR, Reveal from the Center for Investigative Reporting and The New Yorker, among other publications. She is a 2019 graduate of the UC Berkeley Graduate School of Journalism, where she studied investigative and multimedia reporting.

Read more about the [data team and their work](#).

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Written By  
**Justin Phillips**

Reach Justin on

Justin Phillips joined The San Francisco Chronicle in November 2016 as a food writer. He previously served as the City, Industry, and Gaming reporter for the American Press in Lake Charles, Louisiana. In 2019, Justin also began writing a weekly column for The Chronicle's Datebook section that focused on Black culture in the Bay Area. In 2020, Justin helped launch Extra Spicy, a food and culture podcast he co-hosts with restaurant critic Soleil Ho. Following its first season, the podcast was named one of the best podcasts in America by the Atlantic. In February, Justin left the food team to become a full-time columnist for The Chronicle. His columns focus on race and inequality in the Bay Area, while also placing a spotlight on the experiences of marginalized communities in the region.

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[VIEW COMMENTS](#)

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## Top of the News

### Charts show UC admissions rates for every high school in state

Here's how many students are admitted to the University of California at every high school in the state.

BY NAMI SUMIDA

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### Why 49ers are 'built for it' heading into NFC title game

BY MICHAEL SILVER

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### These 'bioswales' were built to help prevent flooding. Here's how they...

BY JOHN KING

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### SFPD use weed-related words to justify unfounded searches of Black people

BY SUSIE NEILSON AND JUSTIN PHILLIPS

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### Bay Area temps are set to rise this week - here's when it'll be warmest

BY MICHELLE APON

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# **SB51 FAV Cannabis Suspicion Inadmissable \_BHRC.pdf**

Uploaded by: Rajani Gudlavalleti

Position: FAV



February 2, 2023

The Honorable William C. Smith, Jr.  
Chairman, Senate Judicial Proceedings Committee  
2 East Miller Senate Office Building  
Annapolis, MD 21401

**Senate Bill 51 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis - FAVORABLE**

Dear Chair Smith and Senate Judicial Proceedings Committee members,

Baltimore Harm Reduction Coalition (BHRC) is an advocacy organization that mobilizes community members for the health, dignity, and safety of people targeted by the war on drugs and anti-sex worker policies. As a certified Overdose Response Program, Naloxone distributor, and syringe service program, we have provided essential health care services across the state for years. BHRC supports Senate Bill 51 Criminal Procedure-Reasonable Suspicion and Probable Cause - Cannabis.

SB51 will revise criminal law to remove the allowance for individuals to be stopped, searched, arrested, or prosecuted based on the odor of cannabis as reasonable suspicion or probable cause for criminal activity. Current law allows for police and prosecution to admit odor of certain cannabis as admissible evidence to prove the possession of or suspicion of possession of cannabis, or the presence of money in proximity to cannabis.

**BHRC supports SB51 and broader efforts to gain freedom from criminalization.** Over 145 years of scapegoating “drug use” as a reason to criminalize people - mostly Black people - has devastated communities across the country. Maryland must prioritize the health, dignity, and safety of its residents, particularly after decades of mass incarceration in the name of the “War on Drugs.”

An aspect of being targeted by the drug war is that our communities are also facing is an increasingly deadly overdose epidemic. Fear of racial profiling by police leads to isolation and stigma about real or perceived drug use. Isolation and stigma are key factors in perpetuating the overdose crisis. In Maryland, police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers. For incidents involving Black drivers, probable cause was used to justify 67% of searches.<sup>1</sup> Since 2012, overdose fatalities have steadily increased among Black Marylanders.<sup>2</sup> Drug war tactics such as the use of cannabis odor to search persons does nothing to reduce drug-related deaths.

The most effective action to reduce stigma associated with drug use is to remove pathways to incarceration, such as stops and searches by police. Ending the allowance of this practice will

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<sup>1</sup> Governor's Office of Crime Control and Prevention (2021). Race-Based Traffic Stop Data Dashboard.

<sup>2</sup> Maryland Department of Health (June 2021). Unintentional Drug- and Alcohol-Related Intoxication Deaths\* in Maryland 2020 Annual Report.

enable people to feel safer about discussing their drug use with loved ones, service providers, and support networks. In order to end the overdose epidemic, we must take steps to end the continuously raging war on drugs. **We ask that the Senate Judicial Proceedings Committee give SB51 a favorable report.**

For more information about Baltimore Harm Reduction Coalition or our position, please contact our Director of Mobilization, Rajani Gudlavalleti at [Rajani@BaltimoreHarmReduction.org](mailto:Rajani@BaltimoreHarmReduction.org)

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Rebecca Shillenn

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of **District 45. I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.** Thank you for your time, service, and consideration.

Sincerely,

**Rebecca Shillenn, 5401 Elsrode Avenue Baltimore 21214**  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **Statement in Support of SB 51 Marijuana Odom Stops**

Uploaded by: Roanld Williams Jr

Position: FAV

**Testimony for the Senate Judicial Proceedings Committee**  
**Thursday, February 2, 2023**  
**SB 51- Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**FAVORABLE**

Dear Mr. Chairman, Vice Chairman, and Committee Members,

My name is Ron Williams Jr. I am a sixth generation Washingtonian and current resident of the District of Columbia, but I am a product of Prince George's County, Maryland. I attended and graduated from elementary, middle, and high school from Prince George's County Public Schools. I am a Maryland Farmer, Waterman, Father, Brother, Son and a clinical social worker's Baby-Daddy and I am here today to tell my story and express my support for Senate Bill 51.

On several occasions traveling through Prince George's County from my home to my farm on the Eastern Shore, I was stopped, searched, and pulled out of my car due to the officer saying they smelled "marijuana odor" in my car. In all of these instances, the Prince George's County police used the odor of marijuana to escalate the situation. And for every instance that they pulled me over, I denied them access to search my vehicle. They searched my vehicle anyway. I was unlawfully arrested after the search, considering the officer never found evidence of a crime. Because of case law at the time, the perceived smell of marijuana allowed law enforcement to pull me out of my car on the side of the highway, handcuff me, and hunt for evidence of a crime. The charges against me were almost immediately thrown out by a judge due to their lack of merit. Marijuana odor was used as a tool to justify state sanctioned harassment against me and other black males that look like me.

I am not alone in my experience. Marijuana odor has been used as a loophole to justify racial profiling for far too long. As we look forward to legalization, this body must ensure that the smell of a soon-to-be legal substance cannot be used to justify a stop, search, and seizure of my person and property.

For the reasons stated above, I urge the committee to pass Senate Bill 51.

Ronald Williams Jr

# **SB 51 Criminal Procedure - Reasonable Suspicion an**

Uploaded by: Roberto Martinez

Position: FAV



**NATASHA DARTIGUE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
CHIEF OF EXTERNAL AFFAIRS

**ELIZABETH HILLIARD**  
ACTING DIRECTOR OF GOVERNMENT RELATIONS

## **POSITION ON PROPOSED LEGISLATION**

**BILL: SB 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 2/1/2023**

The Maryland Office of the Public Defender respectfully requests that this Committee issue a favorable report on SB51.

My name is Roberto Martinez, and I proudly serve as the co-Supervisor for District Court in Montgomery County. In my capacity, I represent Maryland residents accused of misdemeanors and felonies. Additionally, I support and lead a team of civil rights attorneys in their advocacy. Through my representation, I have never encountered an impaired driving case attributed to marijuana. As such, the Legislature should pass SB 51.

Most, if not all, impaired driving cases in Montgomery County follow the same investigative pattern. The National Highway Traffic Safety Administration (NHTSA) trains officers to observe the vehicle in motion, make personal contact, perform standard field sobriety tests, and further investigate impaired driving at the station.

In my time as a dedicated public defender, I have handled hundreds of DUIs (both alcohol and drugs) and tried dozens of cases. I have never tried an impaired driving case based solely on the odor of marijuana. Passing this legislation would not make investigating impaired driving cases more difficult.

To begin, officers look for traffic violations as signs of impairment -- e.g., speeding, straddling lanes, turning too fast, turning too slow, stopping on a cross walk. They look for expired registrations, swerving, accidents, etc. Note there is no reference to odor alone. Once they find a reason to pull the car over, officers observe the individual. They look for slurred speech, blood

shot eyes, slow reactions, poor coordination, and they ask questions—e.g., have you consumed any drugs? When? Note there is no reference odor alone.

If an officer gets passed the vehicle in motion and suspects that the driver is impaired, they perform the standard field sobriety test—Horizontal Gaze Nystagmus, One Leg Stand, Walk and turn—which further establishes probable cause of impaired driving. Roadside investigation concludes with a portable breathalyzer test (PBT). An arrest is made and at the station they confirm perform additional investigation. They use a breathalyzer machine to determine any alcohol concentration. If the officer believes drugs are involved in the impaired driving, they request a drug recognition expert (DRE) to the station. A DRE performs a battery of tests similar to what’s been previously described but looks for additional cues of drug impairment. At times a blood draw is performed.

Officers allege they can detect drug impairment such as PCP, which smells like permanent marker, or cocaine, suboxone etc., which have no distinct odor because there is evidence of impairment. Again, in my time, I've never litigated an impaired driving case based solely on the odor of Marijuana and it's not because Montgomery County Officers refuse to investigate those offenses. Accordingly, passing this legislation will have no effect on investigating Marijuana impaired driving.

**For these reasons, the Maryland Office of the Public Defender strongly urges a favorable report on Senate Bill 0154.**

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

**Authored by: Roberto Martinez, Montgomery County District Court Supervisor & roberto.martinez@maryland.gov**

**SB51 S23 St. Mary's NAACP Testimony (1).pdf**

Uploaded by: Roderick Lewis

Position: FAV

St. Mary's County NAACP Unit #7025

TESTIMONY

February 2nd, 2023

Committee: Judicial Proceedings

Bill: Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis

Sponsor: Senator Jill Carter (D-Baltimore City)

Position: Support

Reason for Position:

The St. Mary's County NAACP stands in support of Senate Bill 51. There's no question that the criminalization of marijuana has caused economic and racial harm, and that's why Marylanders have moved to legalize its consumption. Unfortunately, dangerous loopholes are still in place that can be used to perpetuate the "war on drugs", which really is a war on communities of color. One loophole that's in place is the police having the power to conduct traffic stops and searches based on their belief that they smelled marijuana.

I wish I could say this is something I never experience personally, but unfortunately I have and far too many young black men have also. This loophole was used by some police as an intimidation tactic before marijuana was legalized and it was wrong then as it is now. The thought of police being able to use this loophole when marijuana will be legalized on July 1st 2023 is unconscionable.

Marijuana odor has been used as a loophole to justify racial profiling for far too long. As we look forward to legalization, this body must ensure that the smell, or perception of smell, of a soon-to-be legal substance, without any other behavior, cannot be used to justify a stop and search.

Again, the St. Mary's County NAACP urges a favorable report on Senate Bill 51.

Roderick Lewis  
Chair, Political Action Committee

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Sarah Johnson

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of District 41 in Roland Park. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Sarah Johnson  
1 Merryman Court, Baltimore MD 21210  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **SB51 - Marijuana Odor Search.pdf**

Uploaded by: Tamara Todd

Position: FAV

Dear Senator Smith and members of the Judicial Proceedings Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City and Baltimore County. We are also working in collaboration with the Campaign for Justice Safety and Jobs, and the Maryland Coalition for Justice and Police Accountability. I am a resident of MD District 10. **I am testifying in support of Senate Bill 51, Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis.**



Many police encounters begin with what courts call “reasonable suspicion”: a reason to think that a crime is happening or about to happen. For decades, police have heavily relied on the odor of marijuana as a reason to stop and question people, and to search their vehicles.<sup>1</sup> After all, police argue, a smell of marijuana might mean someone was carrying more than the legally permitted amount, or smoking in public, both of which are against the law. Although no one has collected data on how often the odor of marijuana is the start of a police encounter, any criminal lawyer or judge will tell you that it’s a very popular explanation when police must explain why they stopped someone.

You might think that the legalization measure passed in November would solve the problem, but it won’t: because possession of too large an amount of cannabis is still illegal, police will continue to use the excuse that they cannot tell whether or not a crime has been committed without further investigation of the odor. And since persons under 21 can’t legally possess or use cannabis, police will argue that the odor of marijuana compels them to investigate any people who appear to be under age. Most police investigative stops are already targeted at teenagers and young adults.<sup>2</sup> Police point to arrests for drug and firearm possession as evidence for the success of odor-based stops. But the cases that wind up in court paint a limited picture of the effect this practice has on the community. What about the many people who are stopped, questioned, or searched by police without being charged with any crime? As long as the odor of marijuana alone remains good cause to intrude on ordinary people going about their lives, it will continue to negatively affect people and communities; particularly young, Black people.

Maryland has voted to legalize the personal possession and use of cannabis. It would be unjust to let police continue to use it as a reason to consider people suspicious and worthy of investigation. The courts of multiple jurisdictions- such as Massachusetts, New York, New Hampshire, and Oregon<sup>3</sup>- have found that the odor of a legal substance cannot be the sole basis for the police to stop and investigate someone. New York and Virginia’s legislatures have passed laws to this effect<sup>4</sup>. Maryland, having legalized marijuana, should now join them.

It is for these reasons that I am encouraging you to vote **in support of Senate Bill 51 Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**. Thank you for your time, service, and consideration.

Sincerely,

Tamara Todd  
221 Northway Rd. Reisterstown, MD, 21136  
Showing Up for Racial Justice Baltimore

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<sup>1</sup> Police cannot *arrest* a person based only on the odor of marijuana, but they can detain someone for further investigation. *Lewis v State*, 470 Md 1 (2020); *In re DD*, 479 Md. 206 (2022).

<sup>2</sup> 16.7% of people ages 18-24 report being stopped by police in 2020, compared to 12.2% for people aged 25-44, and 8.1% for people aged 45-64. See: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> Table 1

<sup>3</sup> See *In re DD* at 240 for further citations.

<sup>4</sup> NY CLS Penal § 222.05 and Va. Code Ann. § 4.1-1302.

# **SB0051 Toby Ditz FAV Judicial Proceedings Feb 2023**

Uploaded by: Toby Ditz

Position: FAV

Feb 1, 2023  
Toby Ditz  
Baltimore, MD 21217

**TESTIMONY ON SB0051 POSITION: (FAVORABLE)**  
**Criminal Procedure–Reasonable Suspicion and Probable Cause-Cannabis**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee  
**FROM:** Toby Ditz

I am Toby Ditz, a resident of District 40 in Baltimore City. I am submitting testimony in **strong support of SB0051.**

I have been a proud Baltimorean for almost 40 years, and I have been following police reform legislation closely for the last eight of them in collaboration with more experienced local activists in West Baltimore and throughout the City.

When I was in college at Northwestern University in the late 1960s, my future husband and two of his friends were stopped by the Chicago police in their car as they were driving into the city. The 3 young men were then arrested for possession of marijuana after their car was searched. The pretext for the stop was that the car looked like one that was reported stolen, and the pretext for the search was the smell of marijuana. My friends were white, and within twenty-four hours, after one of them called their lawyer-father in NYC, who in turn put them in touch with local lawyers, they were released on bail and their arrest records subsequently expunged.

We all knew then what is still true today: the outcome would almost certainly have been different had my friends been Black and without easy access to good lawyers. In Maryland today, black drivers are still much more likely than whites to be stopped and searched, and, as a consequence, more likely to be arrested and jailed than whites.

One major aim of the historic suite of police reform bills passed by the General Assembly in 2021 was to curb racial bias in policing in part by heightening protections against illegal stops, searches, and arrests. SB0051 is a fitting successor of this historic legislation, and it too will help to reduce unnecessary interactions with the police. It is especially timely now that Maryland has legalized the use of cannabis.

**I respectfully urge this committee to return a favorable report on Senate Bill #0051.**

# **Treanna Cobb Testimony.pdf**

Uploaded by: Treanna Cobb

Position: FAV

## **Testimony for the Senate Judicial Proceedings Committee**

**Thursday, February 2nd, 2023**

### **SB 51 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis**

#### **FAVORABLE**

Dear Chair Smith, Vice Chair Waldstreicher, and committee members,

My name is Treanna Cobb. I work at the U.S. Census Bureau for the National Crime Victimization Survey. I am currently a master's student at the University of California Irvine, studying Criminology, Law & Society. I attended the University of Maryland – College Park for undergrad and received two bachelor's degrees in Criminal Justice and Information Science. I currently reside in Calvert County, MD with my parents and younger siblings. I am someone with a stake in the community and I have people who love and care for me.

One night I was driving to my boyfriend's house after picking up my sushi for dinner. It was late and Route 4 was empty. I was impatient I can't lie, so I turned down Plum Point Rd to make a U-turn and go back to Route 4. A sheriff's car was down the road, I didn't see him, and pulled me over for making an illegal turn, which was understandable. After giving me the ticket, he puts his head in the car to sniff around – "Do you have marijuana in the car" he asked. "No, I don't but my friends smoked in here a few days ago" I replied. That wasn't sufficient for him. He told me he had to search the vehicle – It was at this point I felt myself having a panic attack. All that went through my mind as he said those words were the videos of black people being pinned down to the ground with guns aimed at them that I was seeing all summer. I wasn't assuming this would be my fate, but a lot of individuals don't think they could be next...until they are.

From here, he tells me to wait in the car because he needs to call for backup. I'm confused as to why that is, so I ask. He tells me it's because he doesn't have a partner and its procedure, or something. I can't recall how long it took until backup arrived but there were 3 Sherriff cars AND the State Trooper. At this point I feel like crying. I'm not a criminal. All these officers were not necessary. As I get out the car, I'm standing next to the State Trooper. I feel dumb but I start talking to him about being a Terp and the work that I do. My goal was to just humanize myself in his eyes. The whole ordeal lasted about 90 mins. A complete waste of my time because they found no illegal substances. I wasn't traumatized but the experience, but it did not help my anxiety. Based on my own experience, the smell of weed should have not required all of this. One look at me and it was clear I was not high or doing drugs at the time. A simple traffic stopped turn into so much more. As a result, I got a civil in addition the ticket I received at the beginning of the interaction.

I support Bill 51 because as Maryland is legalizing marijuana this summer, I want to ensure my black brothers and sisters are protected as much as they can. We are all aware that black people are big consumers of marijuana and Bill 51 will add an additional layer of protection when it comes to police interactions.

# Senator Young SB51.pdf

Uploaded by: William Reid

Position: FAV

To: Senator Karen Lewis-Young

Subject: Please Ban Odor Stops & Searches & Promote Racial Justice!

Dear Senator Lewis-Young

My name is William Reid, and I am one of your constituents.

While the Maryland legislature finally moved to legalize adult recreational use of marijuana last year and voters enthusiastically supported the measure this past fall, the legacy, and tools of the intentionally racist

“War on Drugs” remains. One of these tools is the ability of officers to use the actual or perceived odor of marijuana to justify stops and searches.

The current legal standards allow police to stop an individual or search their vehicle based on the odor of marijuana alone. Police encounters that begin based on the scent of marijuana undermine the right to privacy and enable racial profiling. It is the logical and necessary extension of the legislature’s work in 2022 to legalize recreational marijuana use to limit the use of the odor of marijuana in police encounters in the 2023 legislative session. Marylanders should not fear police interactions because of the lingering aroma of a now-legal substance.

Thank you for your leadership and willingness to make a bold change that meets the moment we are in! With your support of Senate Bill 51, I know we can ensure that we get legalization right in Maryland and protect Marylanders from unnecessary police interactions and violations of their rights.

Sincerely,  
William Reid

# **SB 51\_FAV\_Amanuel.pdf**

Uploaded by: Yanet Amanuel

Position: FAV



## Testimony for the Senate Judicial Proceedings Committee

February 2, 2023

### SB 51- Reasonable Suspicion and Probable Cause - Cannabis

#### Favorable

YANET AMANUEL  
PUBLIC POLICY  
DIRECTOR

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

3600 CLIPPER MILL  
ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND  
DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS  
SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The ACLU of Maryland supports SB 51, which would prohibit police from using the odor of marijuana as a basis to stop an individual or perform a warrantless search of a vehicle.

In 2022, an overwhelming majority of voters supported the legalization of adult, recreational marijuana use. Marylanders affirmed with their vote what legislators acknowledged with the decriminalization of marijuana in 2014: **the criminalization of marijuana is a misuse of police resources and is rooted in racism.** However, legalization alone will not end the disparate enforcement of marijuana laws or unnecessary interactions with the police. In Maryland, current legal standards allow police to stop an individual or search a vehicle based on the alleged odor of marijuana alone.

#### Odor Stops and Searches Facilitate Fourth Amendment Violations

The Fourth Amendment grants individuals a right to be free from unreasonable searches and seizures. However, the Supreme Court has long carved out exceptions for car searches when an officer has probable cause to believe the vehicle contains contraband. Allowing the odor of marijuana to lead to searches and seizures creates a loophole in probable cause justifications as it is being applied after the fact of the stop as the reason for the stop, allowing for racial disparities in stops and arrests to continue. Research shows that police are two times more likely to search Black drivers and their vehicles during traffic stops than white drivers, even though the data shows that Black people are less likely to be found with illicit drugs and other contraband. For incidents involving Black drivers, probable cause was used to justify 67% of searches. In cases involving white drivers, probable cause was only used to justify a search in 46.1% of incidents.<sup>1</sup> SB 51 would

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<sup>1</sup> <http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>

eliminate opportunities for officers to abuse the discretion afforded to them in these situations and reduce opportunities for racial profiling on the road.

Here in Maryland, post-decriminalization—the court’s decisions on these matters have been inconsistent. In 2020, the Court of Appeals ruled that the odor of marijuana alone does not provide probable cause for an arrest or warrantless search of an individual. The court’s decision was based on the idea that smell alone does not suggest criminal activity because an officer cannot determine the quantity of marijuana in someone’s possession and, therefore, does not have probable cause to believe a criminal act is taking place. But the Court of Appeals also recently ruled that, while the odor of marijuana does not provide probable cause for a warrantless search and arrest, it does provide reasonable suspicion that the person may have 10 grams or more and justifies a brief investigatory stop, which seems to defy the logic applied to their 2020 decision. That is why the legislature must step in to ensure that the state’s stance on this issue is consistent and rooted in the will of the people.

### **An Odor Stop and Search Ban Will Not Come at the Expense of Public Safety**

SB 51 will not impede law enforcement's ability to investigate incidents of impaired driving. In the marijuana DUI context, just as with alcohol, there needs to be some evidence of impairment first before an officer conducts a search or arrest. That is why the odor of marijuana alone is insufficient to support that type of stop.

Public safety is of the utmost importance for all our communities, but diligent law enforcement can and should solve a crime using honest and evidence-based techniques without relying on pretextual bases (like the odor of marijuana) for stopping and searching people.

Marylanders should not fear police interactions because of the lingering odor of a now-legal substance and legalization must do more than just allow for the recreational use of marijuana. To be equitable, legalization must disincentivize pretextual police searches and seizures, which result in all sorts of convictions, marijuana-related or not.

For the foregoing reasons, the ACLU of Maryland urges a favorable vote on SB 51.

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AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

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MARYLAND

**2023-02-02 SB 51 (Support with Amendments).pdf**

Uploaded by: Jer Welter

Position: FWA



**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.  
(410) 576-6475

WRITER'S DIRECT DIAL NO.  
(410) 576-6435

February 2, 2023

**TO:** The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee

**FROM:** Jer Welter, Assistant Attorney General

**RE:** SB 51 - Criminal Procedure - Reasonable Suspicion and Probable Cause - Cannabis  
(SUPPORT WITH AMENDMENTS)

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As explained in this memorandum, the Office of the Attorney General urges the Judicial Proceedings Committee to issue a favorable-with-amendments report on Senate Bill 51. Senate Bill 51 modifies the role that cannabis, and particularly the odor of cannabis, could play in determinations of reasonable suspicion and probable cause, in the wake of the partial legalization of cannabis possession for adults.

Recently, at the request of the General Assembly, the Office of the Attorney General issued an opinion concluding that, even after partial legalization becomes effective July 1, 2023, it is likely that the Supreme Court of Maryland would still hold that the odor of cannabis emanating from a vehicle would be sufficient to justify a search of the vehicle.<sup>1</sup> The Attorney General supports the sponsor's policy goal to limit the extent to which otherwise-legal possession of cannabis could give rise to intrusive arrests, stops, or seizures.

However, because the possession or use of cannabis will remain either criminal or subject to civil citation under certain circumstances (such as amount, distribution, underage possession, or use in a motor vehicle), amendments to Senate Bill 51 would be necessary in order to ensure it is compatible with other existing criminal statutes and the legitimate needs of law enforcement. Therefore, the Office urges the Judicial Proceedings Committee to favorably report SB 51, but only if it is amended as we propose.

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<sup>1</sup> 107 Md. Op. Att'y Gen. 153 (Dec. 1, 2022), *available at* <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2022/107OAG153.pdf>

In this memorandum, we discuss the need for the amendments subsection by subsection. We will separately provide the members of the Committee with a draft of proposed amendment language.

### **Subsection (a)**

We support the provision of subsection (a)(1) that the odor of cannabis alone would not establish reasonable suspicion or probable cause. The provisions of subsection (a)(2) and (a)(3) regarding possession of cannabis or the presence of money in proximity to cannabis, however, must be amended.

Under the law that will take effect July 1, 2023, the possession of cannabis above the personal use amount (1.5 ounces), or in any amount by a person under age 21, will remain a civil offense for which an officer must be able to detain an individual to issue a citation. *See* Md. Code, Crim. Law (“C.L.”) §§ 5-101, 5-601, 5-601.1 (eff. July 1, 2023). And possession in amounts exceeding the civil use amount (2.5 ounces) will, standing alone, remain a crime. *See* C.L. § 5-601. (Possession in the very large amounts necessary to establish the offense of “volume dealer” would also, of course, remain criminal. C.L. § 5-612). In addition, possession of cannabis even in a civil use amount (or even, potentially, a personal use amount) may, when combined with “other evidence of an intent to distribute or dispense” (which could include proximity to currency), constitute possession with intent to distribute. C.L. § 5-602(b).

Therefore, amendments are necessary to provide that possession in excess of the personal or civil use amount would establish probable cause, and to provide that the bill does not affect the authority of an officer to detain a person to issue a civil citation under C.L. § 5-601.1.

### **Subsection (b)**

We support the intent of subsection (b) to carve out an exception to allow vehicular searches based on the odor of cannabis in order to investigate whether a person is driving under the influence of cannabis. Indeed, because the concern relates to the *use* of cannabis in a motor vehicle rather than mere possession, it may be appropriate to limit the exception in subsection (b) only to the odor of *burnt* cannabis, as similar legislation in New York has done. *See* N.Y. Penal Law § 222.05(3).

Nevertheless, under the bill's language, the exception would seem to turn on whether the officer subjectively intended to investigate a DUI offense. This is problematic for several reasons: because Fourth Amendment law is generally based on objective assessments rather than an officer's subjective intent; because an officer might subjectively be investigating multiple possible offenses; and because the investigatory aims of a police encounter can be fluid, changing based on what the officer learns. For these reasons, a subjective standard would be difficult for officers and courts to apply. We submit that the limited motor vehicle exception in subsection (b) should be based on the objective circumstance of the odor of burnt cannabis emanating from a vehicle or vessel or its operator, rather than an officer's subjective investigatory purpose.

In addition, smoking or consuming cannabis in a motor vehicle remains a misdemeanor criminal offense when committed by the driver (regardless of intoxication), *see* Transp. § 21-903, and a civil offense when committed by a passenger, *see* C.L. § 10-125. Therefore, the motor vehicle exception must accommodate an officer's authority to detain a motor vehicle and its driver and passengers either to investigate DUI or to issue charges or civil citations when an officer has probable cause for a violation of those non-DUI offenses.

### **Subsection (c)**

Subsection (c), which would establish a provision for the exclusion of evidence, raises three concerns. First, the bill does not address how a court should apply the statutory exclusionary principle that the bill would create in conjunction with other existing Fourth Amendment law that precludes suppression in certain circumstances (e.g., standing, attenuation, good faith, etc.). The bill should specify that only the reasonable suspicion or probable cause standard is affected, and that other established judicial doctrines concerning the Fourth Amendment exclusionary rule remain applicable.

Second, and relatedly, an exclusionary provision that applies to all proceedings of any kind (including non-criminal proceedings) is overbroad and should be limited to the trial for a criminal offense or a civil cannabis offense.

Third, the proviso that the statutory exclusionary provision includes "evidence discovered or obtained with consent" should be stricken. It is unworkable as a matter of Fourth Amendment suppression law because, if evidence was obtained by consent, then it by definition was not discovered based solely on the odor of cannabis or any of the other circumstances specified in subsection (a).

The Honorable William C. Smith, Jr., Chair, Judicial Proceedings Committee  
February 2, 2023  
Page 4

We will submit proposed amendments addressing the foregoing concerns to the members of the Committee under separate cover. If these proposed amendments are adopted, the Office of the Attorney General recommends a favorable with amendments report on Senate Bill 51.

cc: Members of the Committee

**MPP SB 51 FWA.pdf**

Uploaded by: Olivia Naugle

Position: FWA



February 2, 2023

SB 51

**Testimony from Olivia Naugle, senior policy analyst, MPP, favorable with amendments**

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Senate Judicial Proceedings Committee:

My name is Olivia Naugle, and I am the senior policy analyst for the Marijuana Policy Project (MPP), the largest cannabis policy reform organization in the United States. MPP has been working to improve cannabis policy for 27 years; as a national organization, we have expertise in the various approaches taken by different states.

MPP has played a leading role in most of the major cannabis policy reforms since 2000, including more than a dozen medical cannabis laws and 12 of the 21 campaigns to enact legalization laws, including the first two states to legalize cannabis through the state legislature, rather than the ballot box — Illinois and Vermont.

The Marijuana Policy Project strongly supports legalizing and regulating cannabis for adults 21 and older and doing so in a way that repairs the damage inflicted by criminalization.

**MPP supports SB 51 with amendments.**

This past election, Maryland voters voted overwhelming in favor (67.2 percent) of Question 4 — a constitutional amendment to legalize cannabis for adults in Maryland beginning July 1, 2023. In fact, the passage of Question 4 was the highest margin of any ballot measure to legalize cannabis.

While the passage of Question 4 was a critical step to end the failed policy of cannabis prohibition, Maryland should further reform its cannabis policies to be sure that the odor of cannabis is not grounds for a search. This legislation is particularly necessary in light of then-Attorney General Frosh’s opinion that some searches based on the odor of cannabis will likely be permissible after legalization.<sup>1</sup>

The odor or supposed odor of cannabis is often used as a pretext to stop and search residents, and we know that traffic searches are disproportionately performed on cars with Black or Latino drivers.<sup>2</sup> Traffic stop interactions have led to violence and death for Black

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<sup>1</sup> <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2022/107OAG153.pdf>

<sup>2</sup> Phillip Smith, “States that legalized marijuana see dramatic drop in police traffic searches,” *Alternet*, April 1, 2019. (Before legalization 1.3% of black drivers were subject to traffic searches in Colorado. After legalization, the rate was under 0.2%. Among Hispanic drivers, the rate dropped from 1% to 0.1%. Among whites, the rate of searches dropped from 0.4% to 0.1%. Thus, black drivers went from being 6.5 times as likely to be searched as whites to twice as likely, and the total likelihood of black drivers being subject to a traffic search dropped eightfold.)

Americans.<sup>3</sup> To further reduce police interactions for a soon to be legal substance, Maryland should pass SB 51 this year. Most recent, legislatively enacted legalization states explicitly provided that the odor of cannabis isn't grounds for a search. This includes Connecticut, New Jersey, New York, and Virginia.<sup>4</sup> Maryland should follow suit.

### **Improving the language to specify that the odor of cannabis is not grounds for a search**

We'd like to offer one amendment to strengthen the bill as currently written. While we strongly support SB 51's intent, we are concerned that its exception to the prohibition on searches based on odor is too broad and that it would still provide cover for intrusive and traumatic searches that are not necessary to protect public safety. Subsection (B) would allow law enforcement to search the area of a vehicle "readily accessible to the driver" for cannabis while "investigating whether a person is driving ... while impaired ..."

The odor of cannabis lingers long after it was used, and the odor can just as easily come from passengers. There is no reason to allow law enforcement to search based on the odor — which we know in many cases will just be the claimed / imagined odor<sup>5</sup> — or possession of a legal product.

If an officer has a legal basis to believe the driver is impaired, they can do a DRE exam with a field sobriety test. And, if they have the legal basis, blood can be drawn by a medical professional.

We urge you to remove the exception in subsection B, or to replace it with language more akin to other states' such as Connecticut's. The language could make it clear that law enforcement can still investigate if the *driver* is impaired, without giving permission to search the vehicle.

We suggest deleting the following entirely:

(b) Subsection (a) of this section does not apply when a law enforcement officer is investigating whether a person is driving, operating, or controlling a motor vehicle or vessel while impaired by drugs, except that the odor of cannabis may not be the

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<sup>3</sup> Tanvi Misra, "Uncovering Disparities In Policing By Analyzing Traffic Stop Data," *Pacific Standard*, June 7, 2018.

<sup>4</sup> Citations are available at: <https://www.mpp.org/assets/pdf/issues/criminal-justice/2021.11.19%20State%20Analysis%20Chart.pdf>

<sup>5</sup> See, i.e. Meghan Matt, "In The Age Of Decriminalization, Is The Odor Of Marijuana Alone Enough To Justify A Warrantless Search?" ("While some people may find it difficult, or perhaps uncomfortable, to believe police would falsify information, a report by the New York Times published in 2019 found that "on more than 25 occasions since January 2015, judges or prosecutors determined that a key aspect of a New York City police officer's testimony was probably untrue" and "at least five other judges have concluded in individual cases that officers likely lied about smelling marijuana to justify searches that turned up an unlicensed firearm."); In Baltimore, an officer was convicted of going further than lying about the smell of evidence — and of actually planting drugs. See: Kevin Rector, "Baltimore Police officer found guilty of fabricating evidence in case where his own body camera captured the act," *The Baltimore Sun*, Nov. 9, 2018. And, regarding another officer who ultimately served time: Julia Jacobo, "Baltimore Police sergeant planted drugs in suspect's car, federal prosecutors say," ABC News, Nov. 30, 2017.

basis for finding probable cause to justify the search of an area of a vehicle or vessel that is not:

- (1) readily accessible to the driver or operator; or
- (2) reasonably likely to contain evidence relevant to the condition of the driver or operator.

Or replacing it with:

(b) Nothing in this section prevents a law enforcement official from conducting a test for impairment based in part on the odor of recently burnt cannabis if the law enforcement official would otherwise be permitted to do so under law.

Thank you to Senator Carter for her leadership on this important legislation. Thank you to members of the Judicial Proceedings Committee for your time and attention to this issue. We urge the bill to be amended and receive a favorable report.

If you have any questions or need additional information, I would be happy to help and can be reached at the email address or phone number below.

Sincerely,

Olivia Naugle  
Senior Policy Analyst  
Marijuana Policy Project  
onaugle@mpp.org  
202-905-2037

**SB0051\_carr\_FWA.pdf**

Uploaded by: Rusty Carr

Position: FWA

SB0051 Favorable with Amendments  
Warren (Rusty) Carr  
4391 Moletton Drive  
Mount Airy, MD 21771

I am in favor of SB51 with the following amendment:

Remove 1-211.B (lines 4-12)

The odor of hemp is indistinguishable from the odor of cannabis. Hemp is non-impairing. Odor can not be a probable cause of impairment and thus cannot be a probable cause for any search.

Thank you,  
Rusty Carr

**MCPA-MSA-SB 51-Odor of Cannabis\_Oppose.pdf**

Uploaded by: Andrea Mansfield

Position: UNF



# Maryland Chiefs of Police Association

## Maryland Sheriffs' Association



### MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and  
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 2, 2023

RE: **SB 51 – Criminal Procedure – Reasonable Suspicion and Probable Cause -  
Cannabis**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE SB 51. This bill would prohibit the odor of cannabis alone from providing either reasonable articulable suspicion (allowing a temporary seizure under the Fourth Amendment) or probable cause (allowing, among other things, a warrantless search of a vehicle under the Fourth Amendment).

Currently, possession of cannabis in any amount is illegal in Maryland, subject to rare exceptions such as being a lawful holder of a medical cannabis card. Beginning on July 1, 2023, individuals will be able to lawfully possess up to 1.5 ounces of cannabis. Possession of any amount of cannabis beyond that will continue to be illegal, with criminal penalties to more than 2.5 ounces. Possession of cannabis by individuals under the age of 21 will also continue to be illegal, regardless of the amount.

Recognizing that cannabis remained presumptively contraband, the Court of Appeals (now the Supreme Court of Maryland) has held that the odor of cannabis alone provides a law enforcement officer with probable cause to search a vehicle for the contraband, *Robinson v. State*, 451 Md. 94 (2017), and reasonable articulable suspicion to briefly detain to investigate if a criminal offense was occurring, *In re D.D.*, 479 Md. 206 (2022). The Court of Appeals also determined that the odor of cannabis alone does not provide an officer with probable cause to arrest a person. *Lewis v. State*, 470 Md. 1 (2020). The Court recognized the difference between reasonable suspicion and probable cause from burdens of proof in a court proceeding, and the importance of allowing police officers to use information available to investigate and enforce the criminal laws of the State. The Court's reasoning will continue to be completely true for individuals under 21 and for those smoking cannabis in public.

The Attorney General has provided an Opinion discussing the impact of partial legalization on search and seizure issues. 107 Op.Att'y Gen. 153 (2022). Given that "probable cause" in the context of vehicle searches "requires only a fair probability that evidence of a crime is present," *Id.* at 183, the Attorney General concluded that odor of cannabis in a vehicle will continue, by itself, to amount to probable cause. Similarly, the Attorney General concluded that the Supreme Court of Maryland "would hold that officers still have the authority to briefly detain someone who smells of cannabis." *Id.* at 195.

532 Baltimore Boulevard, Suite 308  
Westminster, Maryland 21157  
667-314-3216 / 667-314-3236

The Attorney General very carefully and thoroughly discussed the issues surrounding searches and seizures and cannabis. The Attorney General reached the correct conclusions. Using odor of cannabis alone as grounds to briefly detain a person or to search a vehicle will not violate the Fourth Amendment and would be reasonable.

In general, if the government obtains evidence in violation of the Fourth Amendment's reasonable articulable suspicion or probable cause requirements, the evidence is not allowed to be used by the government in a *criminal* trial. *See, e.g., Mapp v. Ohio*, 367 U.S. 643 (1961) (applying an evidence exclusionary rule to the States). SB 51 goes far beyond the exclusion of evidence in a criminal trial. Under SB 51, such evidence would not be admissible in *any* proceeding, regardless of the nature of the proceeding or who wishes to introduce the evidence, for what purpose, or what the further evidence is. The prohibition even extends to evidence obtained "with consent," regardless of whether consent is knowing and voluntary. The United States Supreme Court has commented on the "heavy toll" that the Court's Fourth Amendment exclusionary rule exacts on both the judicial system and society at large and, accordingly, "Our cases hold that society must swallow this bitter pill when necessary, but only as a last resort." *Davis v. United States*, 564 U.S. 229, 237 (2011). SB 51 makes exclusion a first resort, not a last resort.

For these reasons, MCPA and MSA OPPOSE SB 51.

# **Smoking Cannabis in Vehicle.pdf**

Uploaded by: David Daggett

Position: UNF

~~(d) Cannabis cultivation may occur only on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property.~~

~~(e) A person under the age of 21 years may not cultivate cannabis plants.~~

~~(f) (1) A person may not cultivate more than two cannabis plants.~~

~~(g) (2) If two or more persons at least 21 years old reside at the same residence, no more than two cannabis plants may be cultivated at that residence.~~

~~(g) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.~~

### Article – Criminal Law

#### 10-123.

(a) In this part the following words have the meanings indicated.

(b) “Alcoholic beverage” has the meaning stated in § 21-903 of the Transportation Article.

(c) “Bus” has the meaning stated in § 11-105 of the Transportation Article.

**(D) “CANNABIS” HAS THE MEANING STATED IN § 5-101 OF THIS ARTICLE.**

~~[(d)] (E) “Highway” has the meaning stated in § 11-127 of the Transportation Article.~~

~~[(e)] (F) “Limousine” has the meaning stated in § 11-129.1 of the Transportation Article.~~

~~[(f)] (G) “Motor home” has the meaning stated in § 11-134.3 of the Transportation Article.~~

~~[(g)] (H) (1) “Motor vehicle” means a vehicle that:~~

~~(i) is self-propelled or propelled by electric power obtained from overhead electrical wires; and~~

~~(ii) is not operated on rails.~~

~~(2) “Motor vehicle” includes:~~

~~(i) a low speed vehicle, as defined in § 11-130.1 of the Transportation Article;~~

and (ii) a moped, as defined in § 11-134.1 of the Transportation Article;

(iii) a motor scooter, as defined in § 11-134.5 of the Transportation Article.

[(h)] (I) "Moving violation" has the meaning stated in § 11-136.1 of the Transportation Article.

[(i)] (J) "Open container" means a bottle, can, or other receptacle:

(1) that is open;

(2) that has a broken seal; or

(3) from which the contents are partially removed.

[(i)] (K) "Passenger area" has the meaning stated in § 21-903 of the Transportation Article.

[(k)] (L) "Taxicab" has the meaning stated in § 11-165 of the Transportation Article.

10-125.

(a) (1) Except as otherwise provided in subsection (c) of this section, an occupant of a motor vehicle may not possess an open container that contains any amount of an alcoholic beverage in a passenger area of a motor vehicle on a highway.

(2) A driver of a motor vehicle may not be subject to prosecution for a violation of this subsection based solely on possession of an open container that contains any amount of an alcoholic beverage by another occupant of the motor vehicle.

(b) (1) This subsection does not apply to the driver of a motor vehicle.

(2) Except as otherwise provided in subsection (c) of this section, an occupant of a motor vehicle may not consume an alcoholic beverage in a passenger area of a motor vehicle on a highway.

(3) AN OCCUPANT OF A MOTOR VEHICLE MAY NOT SMOKE CANNABIS IN A PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.

CR  
Penalty \$ 25<sup>00</sup> §10-126

(c) Subsections (a)(1) and (b)(2) of this section do not apply to an occupant, who is not the driver, in:

(1) a motor vehicle designed, maintained, and used primarily for the transportation of a person for compensation, including:

- (i) a bus;
- (ii) a taxicab; or
- (iii) a limousine; or

(2) the living quarters of a motor home, motor coach, or recreational vehicle.

(d) Notwithstanding § 6-320, § 6-321, or § 6-322 of the Alcoholic Beverages Article, or any other provision of law, the prohibitions contained in this section apply throughout the State.

(e) A violation of this section is not:

- (1) a moving violation for the purposes of § 16-402 of the Transportation Article; or
- (2) a traffic violation for the purposes of the Maryland Vehicle Law.

#### Article - Health - General

#### SUBTITLE 46. COMMUNITY REINVESTMENT AND REPAIR FUND.

#### 13-4601.

(A) (1) THERE IS A COMMUNITY REINVESTMENT AND REPAIR FUND.

(2) THE PURPOSE OF THE FUND IS TO PROVIDE FUNDS TO COMMUNITY-BASED ORGANIZATIONS THAT SERVE COMMUNITIES DETERMINED BY THE OFFICE OF THE ATTORNEY GENERAL TO HAVE BEEN THE MOST IMPACTED BY DISPROPORTIONATE ENFORCEMENT OF THE CANNABIS PROHIBITION BEFORE JULY 1, 2022.

(3) THE COMPTROLLER SHALL ADMINISTER THE FUND.

(4) (I) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(II) THE STATE TREASURER SHALL HOLD THE FUND SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(5) THE FUND CONSISTS OF:

**sb51.pdf**

Uploaded by: Matthew Pipkin

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 51  
Criminal Procedure – Reasonable Suspicion and Probable Cause -  
Cannabis  
**DATE:** January 30, 2023  
(2/2)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 51. This bill provides that a finding of reasonable suspicion or probable cause may not be based solely on the odor of raw or burnt cannabis, the presence of money in proximity to cannabis, or possession of cannabis. However, the language on page 1, lines 20-22 appears to broaden the applicability to cases “relating to possession of contraband or other criminal activity.” That language is very broad and it is unclear whether that broad application is intentional.

In addition, the bill contains an exception for certain driving offenses. However, it is unclear why the language on page 2, line 5 provides for “investigating” rather than “reasonable suspicion.” It is unclear how to interpret that general term in the context of other Fourth Amendment jurisprudence. It is also unclear how to read the competing sections on page 2, lines 4 through 12. The section carves out certain offenses but then creates an exception that itself has an exception. The drafting makes it difficult to understand and likely difficult to apply.

Lastly, without exception, the bill provides that evidence discovered or obtained in violation of this bill, including evidence discovered or obtained with consent, is not admissible. This section conflicts with Fourth Amendment jurisprudence regarding consent searches. It is also hard to read this section in conjunction with the earlier provision. If a search is done with the consent of the party, it is necessarily not based on a finding of probable cause and thus the earlier section would not apply.

cc. Hon. Jill Carter  
Judicial Council  
Legislative Committee  
Kelley O’Connor

# **SB 51 - Criminal Procedure - Reasonable Suspicion**

Uploaded by: Scott Shellenberger

Position: UNF

**Bill Number: SB 51**  
**Scott D. Shellenberger, State's Attorney for Baltimore County**  
**Opposed**

**WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,**  
**STATE'S ATTORNEY FOR BALTIMORE COUNTY,**  
**IN OPPOSITION TO SENATE BILL 51**  
**CRIMINAL PROCEDURE – REASONABLE SUSPICION AND PROBABLE CAUSE –**  
**CANNABIS**

I write in opposition to Senate Bill 51 that would codify what is and what is not probable cause to investigate a crime. Maryland has for decades allowed the Courts to set the standards of what constitutes probable cause to search a vehicle or person. To try and now take well recognized case law and turn it into a statute is unworkable and will hinder the proper investigation of crimes. The public will become less safe.

Furthermore, the Bill in one sentence throws out searches that are conducted with consent. Consent is another area of the law covered by case law in well-reasoned opinions with standards that have been well established.

The courts have ruled that it is the individual facts of a case coupled with well established case law that should govern the rules on search and seizure not a statute.

While the rules concerning searches may be changing when cannabis becomes legal that should be for the courts to decide not the Legislature. The Courts should decide the constitutionality of searches. Please remember alcohol is legal yet the police are entrusted to assess what may lead to probable cause in an alcohol related case. Just like alcohol the Courts should set the constitutional rules when cannabis becomes legal.

I urge an unfavorable vote.